

7  
No. 2603

---

United States  
Circuit Court of Appeals  
For the Ninth Circuit.

---

Transcript of Record.  
(IN TWO VOLUMES.)

---

PACIFIC POWER COMPANY, a Corporation,  
Plaintiff in Error,  
vs.  
P. R. SHEAFF,  
Defendant in Error.

---

VOLUME I.  
(Pages 1 to 304, Inclusive.)

---

Upon Writ of Error to the United States District  
Court of the District of Nevada.

---

Filed

JUL 1 - 1915

F. D. Monckton,  
Clerk.

---



United States  
Circuit Court of Appeals  
For the Ninth Circuit.

---

Transcript of Record.  
(IN TWO VOLUMES.)

---

PACIFIC POWER COMPANY, a Corporation,  
Plaintiff in Error,  
vs.  
P. R. SHEAFF,  
Defendant in Error.

---

VOLUME I.  
(Pages 1 to 304, Inclusive.)

---

Upon Writ of Error to the United States District  
Court of the District of Nevada.

---





# INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

---

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

	Page
Admission of Service of Copy of Bill of Excep- tions .....	589
Affidavit of Service of Summons.....	10
Answer.....	15
Answer to Writ of Error.....	593
Assignment of Errors.....	38
Assignment of Insufficiency of the Evidence...	87
Bill of Exceptions.....	98
Certificate of Clerk U. S. District Court to Tran- script of Record, etc.....	592
Citation on Writ of Error.....	596
Complaint.....	1
Copies of Drawings Made on Board by Counsel as to Splicing of Tendon Achilles.....	368
Demurrer.....	11
Drawing on Blackboard as to Tendon Achilles, Facsimile of.....	354
Drawing Made on the Board (2), Facsimile of..	115
Drawing upon the Board, Facsimile of (1).....	109
Drawings Made on Blackboard by Counsel as to Splicing of Tendon Achilles.....	368

	Index.	Page
Error No. 1.....		224
Error No. 2.....		230
Error No. 3.....		253
Error No. 4.....		256
Error No. 5.....		257
Error No. 6.....		258
Error No. 7.....		259
Error No. 8.....		259
Error No. 9.....		259
Error No. 10.....		260
Error No. 11.....		262
Error No. 12.....		270
Error No. 13.....		271
Error No. 14.....		283
Error No. 15.....		290
Error No. 16.....		291
Error No. 17.....		297
Error No. 18.....		300
Error No. 19.....		304
Error No. 20.....		321
Error No. 21.....		322
Error No. 22.....		340
Error No. 23.....		340
Error No. 24.....		350
Error No. 25.....		351
Error No. 26.....		381
Error No. 27.....		384
Error No. 28.....		390
Error No. 29.....		424
Error No. 30.....		442
Error No. 31.....		461

Index.	Page
Error No. 32.....	464
Error No. 33.....	468
Error No. 34.....	469
Error No. 35.....	471
Error No. 36.....	471
Error No. 37.....	472
Error No. 38.....	484
Error No. 39.....	484
Error No. 40.....	487
Error No. 41.....	490
Error No. 42.....	499
Error No. 43.....	505
Error No. 44.....	506
Error No. 45.....	542
Error No. 46.....	543
Error No. 47.....	545
Error No. 48.....	548
Error No. 49.....	550
Error No. 50.....	554
Error No. 51.....	577
Error No. 52.....	578
Error No. 53.....	579
Error No. 54.....	579
Error No. 55.....	580
Error No. 56.....	584
Error No. 57.....	584
Error No. 58.....	585
Error No. 59.....	587
Exceptions, Bill of.....	98

## EXHIBITS:

Exhibit—Copies of Drawings Made on Board by Counsel as to Splicing of Tendon Achilles.....	368
Exhibit—Facsimile of Drawing Made on the Board (2).....	115
Exhibit—Facsimile of Drawing upon the Board (1) .....	109
Exhibit—Illustration Drawn on Blackboard as to Tendon Achilles.....	354
Plaintiff's Exhibit No. 1—Letter, April 1, 1912, Chatfield to Sheaff.....	220
Plaintiff's Exhibit No. 2—4 Letters, Chatfield to Sheaff.....	231
Plaintiff's Exhibit No. 3—6 Letters, Poole to Sheaff .....	234
Plaintiff's Exhibit No. 4—Photograph....	600
Plaintiff's Exhibit No. 5—Photograph....	601
Plaintiff's Exhibit No. 6—Photograph....	602
Plaintiff's Exhibit No. 7—Photograph....	603
Plaintiff's Exhibit No. 8—Photograph....	604
Defendant's Exhibit "A"—Check.....	173
Defendant's Exhibit "B"—Check .....	174
Defendant's Exhibit "C"—Check .....	175
Defendant's Exhibit "D"—Check.....	176
Defendant's Exhibit "E"—Check .....	177
Defendant's Exhibit "F"—Check .....	179
Defendant's Exhibit "G"—Check.....	180
Defendant's Exhibit "H"—Photograph...	605
Defendant's Exhibit "I"—Release .....	210
Defendant's Exhibit "J"—Letter, October 9, 1911, Sheaff to Chatfield.....	606



Index.

Page

EXHIBITS—Continued:

Defendant's Exhibit "K"—Letter, December 1, 1911, Sheaff to Pacific Power Co.	212
Defendant's Exhibit "L"—Letter, January 1, 1911 (1912), Sheaff to Pacific Power Co.....	213
Defendant's Exhibit "M"—Letter, February 13, 1912, Sheaff to Pacific Power Co.....	214
Defendant's Exhibit "N"—Letter, January 16, 1912, Sheaff to Pacific Power Co.....	607
Defendant's Exhibit "O"—Telegram—September 4, 1911, Poole to Sheaff....	243
Defendant's Exhibit "P"—Letter, February 14, 1912, Chatfield to Sheaff.....	244
Defendant's Exhibit "R"—Telegram, July 19, 1911, Dr. Gardner to Pacific Electric Co.....	364
Defendant's Exhibit "S"—Checks .....	288
Facsimile of Drawing Made on the Board (2)...	115
Facsimile of Drawing upon the Board (1).....	109
Facsimile of Illustration Drawn on Blackboard as to the Tendon Achilles.....	354
Judgment.....	23
Motion for Order Granting New Trial.....	27
Notice of Intention to Move for a New Trial...	25
Opinion on Motion for a New Trial.....	28
Order Allowing Defendant to March 6, 1915, to File Petition for Writ of Error, etc.,.....	35

Index.	Page
Order Allowing Writ of Error and Fixing Amount of Supersedeas Bond.....	92
Order Extending Time to File Record on Writ of Error and Docket Cause.....	591
Order for Removal.....	13
Order Granting Plaintiff in Error to May 10, 1915, to File Record in Appellate Court....	598
Order of Court Overruling the Demurrer, as Entered on the Law Journal, of Date February 8, 1913, at Page 758.....	13
Order Settling Bill of Exceptions.....	590
Petition for Writ of Error.....	36
Specifications of Particulars in Which the Ver- dict is Against Law.....	91
Stipulation as to Original Exhibits.....	588
Stipulation to Correctness of Bill of Excep- tions.....	589
Summons.....	8
Supersedeas Bond on Writ of Error.....	94
TESTIMONY ON BEHALF OF PLAIN- TIF:	
ADAMS, MRS. V. L. (in rebuttal).....	541
ADAMS, V. L. (in rebuttal).....	543
CAMPBELL, LEE.....	248
Cross-examination....	266
Further Direct Examination.....	268
Further Cross-examination....	272
Redirect Examination.....	282
Recross-examination....	284
DICKINSON, B. F.....	247

Index.

Page

TESTIMONY ON BEHALF OF PLAIN-

TIFF—Continued:

GARDNER, Dr. GEORGE M..... 340

Cross-examination..... 352

Redirect Examination..... 378

In rebuttal..... 548

Cross-examination..... 549

HALPENNY, R. H..... 289

Cross-examination.... 293

Redirect Examination..... 293

HERRING, CLIFTON..... 320

Cross-examination.... 327

Redirect Examination..... 337

Recross-examination.... 339

SCRUGHAM, J. G..... 293

Cross-examination..... 305

Redirect Examination.... 316

Recross-examination.... 318

Redirect Examination.... 320

SHEAFF, P. R..... 98

Cross-examination..... 128

Redirect Examination..... 217

Recross-examination..... 242

In rebuttal..... 549

Cross-examination.... 551

STONE, CHARLES H..... 381

Cross-examination..... 382

TESTIMONY ON BEHALF OF DEFEND-

ANT:

BLOCK, W. H..... 397

Cross-examination..... 400



	Index.	Page
TESTIMONY ON BEHALF OF DEFEND-		
ANT—Continued:		
CHATFIELD, W. N.....		534
Cross-examination.....		537
Redirect Examination.....		540
Recross-examination.....		541
GREENLEAF, P. W.....		401
Cross-examination.....		418
Redirect Examination.....		428
Recross-examination.....		429
HALPENNY, R. H.....		431
Cross-examination.....		459
Redirect Examination.....		491
Recross-examination.....		493
HERRING, CLIFTON.....		430
Cross-examination.....		431
MORRISON, DR. SIDNEY K.....		514
Cross-examination.....		525
Redirect Examination.....		533
Recross-examination.....		534
PERRIN, GEORGE L.....		392
Cross-examination.....		395
PITTMAN, W. V.....		513
Cross-examination.....		514
POOLE, CHARLES O.....		493
Cross-examination.....		502
Redirect Examination.....		511
Recross-examination.....		512
Verdict.....		23
Writ of Error.....		594



*In the Eighth Judicial District Court of the State  
of Nevada, in and for the County of Churchill.*

P. R. SHEAFF,

Plaintiff,

vs.

PACIFIC POWER COMPANY, a Corporation,  
Defendant.

**Complaint.**

Now comes the above-named plaintiff by Curler and Martinson, his attorneys, and complaining of the above-named defendant for cause of action alleges and shows to the Court as follows, to wit:

I.

That the plaintiff now is and at all of the dates and times hereinafter mentioned has been a resident of the City of Oakland, Alameda County, State of California.

II.

That the defendant now is and at all of the dates and times hereinafter mentioned was a corporation duly organized and existing under and by virtue of the laws of the State of California. That the defendant now is and at all of the times hereinafter mentioned has been engaged as a public service corporation in the business of generating, developing, transmitting, selling, distributing and delivering electricity and its resultants, electric energy, power, light and heat to its patrons [1\*] and customers in the states of California and Nevada, and particu-

---

\*Page-number appearing at foot of page of Original Certified Transcript of Record.

larly in Churchill County, Nevada, and has been and now is engaged in the business of constructing, maintaining and operating pole and wire lines, transformers and substations together with appliances, appurtenances and equipment used in conjunction and connection with said pole and wire lines and transformers, stations and substations for the transmission and distribution thereon and thereby of electricity and of the delivery of its resultants, electric energy, power, light and heat.

### III.

That on the 18th day of July, A. D. 1911, and for a period immediately prior and subsequent thereto at the Nevada Hills substation near Fairview in Churchill County, Nevada, the defendant did negligently, carelessly and recklessly and without regard to the security and personal safety of its employees, and without regard particularly to the security and personal safety of plaintiff herein, build, erect, construct and maintain a certain electrical equipment, structure and appliance called a lightning-arrester to which was attached high potential primary wires carrying electricity and electrical current in highly dangerous amount, potential and voltage, to wit, about sixty thousand (60,000) volts on each of said primary wires. That said defendant prior to said 18th day of July, 1911, did negligently, carelessly and recklessly, and without regard to the safety of its employees and particularly the plaintiff herein, build, erect, and, on said 18th day of July, A. D. 1911, did maintain said lightning-arrester in a defective manner and condition; that said lightning-arrester was

insufficient and defective in mode and manner of construction and design and was defective and dangerous in that high potential primary wires and the wires, rods, arms and appliances carrying [2] and transmitting electrical currents and energy of high and dangerous amount and voltage were not erected, built and maintained at a safe and sufficient height and distance from the ground but was built and maintained too near the ground and in too close proximity to the Nevada Hills station-house or transformer station.

#### IV.

That on said 18th day of July, A. D. 1911, plaintiff herein was in the employ of the defendant as a laborer and electrician's helper and was unfamiliar with the work of a journeyman lineman and electrician and was unacquainted with and ignorant of the dangers incident to the work of a journeyman lineman and electrician upon or near wires or apparatus carrying electrical current of high voltage and potential energy and plaintiff was receiving from defendant only the wages of a laborer or helper. That on said 18th day of July, 1911, plaintiff was ordered to work in and around and near said lightning-arrester and said Nevada Hills transformer-house and substation. That said place was a dangerous place in which to work by reason of the defects alleged herein and by reason of the fact that the live arms of said lightning-arrester were so near the ground and in so close proximity to said substation building. That said dangers and dangerous condition were wholly unknown to plaintiff herein and



plaintiff was ignorant of the same.

V.

That plaintiff on said 18th day of July, 1911, while working near and around said lightning-arrester as ordered by defendant came either in such close proximity to or in contact with one of the said arms of said lightning-arrester, whereupon a large amount of electrical current, to wit, sixty thousand (60,000) volts, passed through the body of plaintiff to the [3] ground, thereby inflicting upon plaintiff a violent electrical shock and severe and dangerous injuries.

VI.

That by reason of said negligent and defective construction of said lightning-arrester and by reason of its construction and maintenance at an unsafe and insufficient distance from the ground and by reason of its nearness to said transformer-house and by reason of the dangerous place in which plaintiff was ordered to work and of receiving said shock and charge of electricity, plaintiff sustained a number of serious and grievous injuries as follows, to wit, eight electrical burns in the upper and posterior portion of the left shoulder region; a burn on the right side in the suprascapular, scapular, infrascapular and interscapular regions; a burn extending upward from said last mentioned burn to both shoulders and to the neck behind, thence to the left side of the face as far as the upper portion of the left ear; a burn on the left foot extending from the dorsal and outer surfaces from the ankle above to the end of the toes below; a burn on the right foot and leg on the inner

side extending from three inches above the ankle bone running downward, forward and outward across the planter arch to the outer angle of the under surface of the foot and small toe. That said eight electrical burns on the upper and posterior portion of the left shoulder region were and are electrical burns of the third degree and were from one-half to four inches in diameter and destroyed the entire skin and muscular tissue for a depth of one inch or more. That said burn on the right side in the suprascapular, scapular, infrascapular and right interscapular regions was and is a wedge-shaped burn ten inches long and five inches wide at its upper base, and destroyed the entire skin and muscular tissue to a depth of an inch or more, [4] and near the base of this wedge-shaped burn at its upper portion was and is a circumscribed area of burned mass one and one half inches in diameter, the tissue in which was destroyed entirely to the scapular bone. That said burn extending from said last mentioned burn upward to both shoulders and to the neck behind and thence to the left side of the face as far as the upper portion of the left ear, was a burn of the first and second degree and destroyed the upper layers of the skin. That the burn on the left foot extending from the dorsal and outer surface from the ankle above to the ends of the toes below, was and is a burn five inches long and three inches in width and of the third degree and destroyed the entire skin and the three tendons supplying the three small toes, the muscular tissue down to the bone surfaces, all the nerves thereto and bones of the two small toes so that the



same had to be and were amputated; burns of the first and second degree extending from the area last described in various directions affect all of the remaining toes of said left foot. That the burn on the right foot and leg extending outward across the planter arch and the outer angle of the under surface of the foot and small toe, was and is a burn of the third degree about nine inches long and from two to three inches wide and destroyed the entire skin, muscular tissue, nerve filaments and portions of the extensor tendons down to the bone. That on account of the said physical injuries plaintiff was and has been compelled to undergo medical and surgical treatment from the date of said injuries up to the present time, and will continue to require and need such medical aid and treatment indefinitely; that as a consequence of said injuries, plaintiff was unable to leave his bed for a period of about three months and is still unable to walk, and suffered and still suffers grievous pain and anguish. [5]

#### VII.

That the plaintiff is informed and believes, and upon such information and belief alleges the fact to be, that said physical injuries are permanent in character and effect, to the extent that they will, during his entire remaining lifetime deprive him of the use of his feet and legs and make it impossible for him to perform manual labor and continue to cause him great physical pain and anguish.

#### VIII.

That by reason of said physical injuries and plaintiff's inability to work or perform manual labor,

plaintiff has been caused great and grievous mental anguish and suffering.

IX.

That by reason of the infliction of said physical injuries on plaintiff and by reason of the negligence, carelessness and wilful indifference of defendant as aforesaid, plaintiff has been damaged in the sum of Thirty Thousand Dollars (\$30,000.00), all of which remains due and unpaid from defendant to plaintiff. That by reason of the mental anguish suffered and to be suffered by reason of said injuries, plaintiff has been damaged in the sum of Ten Thousand Dollars (\$10,000.00), all of which remains due and unpaid from defendant to plaintiff.

WHEREFORE, plaintiff prays judgment against defendant for the sum of Forty Thousand Dollars (\$40,000.00) and costs of suit herein expended.

CURLER & MARTINSON,  
Attorneys for Plaintiff. [6]

State of Nevada,  
County of Churchill,—ss.

P. R. Sheaff, being first duly sworn, deposes and says: That he is the plaintiff in the above-entitled action; that he has heard read the above and foregoing complaint and knows the contents thereof; that the same is true of his own knowledge except as to the matters therein stated on information or belief and as to those matters he believes it to be true.

P. R. SHEAFF.

Subscribed and sworn to before me, this 10th day of April, A. D. 1912.

[Notarial Seal]

F. P. STRASSBURG,

Notary Public.

[Endorsed]: Filed this 10th day of April, A. D. 1912. C. L. Noble, Clerk. By J. T. Collins, Deputy Clerk. Curler & Martinson, Attorneys for Plaintiff, Reno, Nevada.

[Endorsed]: No. 1571. U. S. District Court, Dist. Nevada. Filed August 20, 1912. T. J. Edwards, Clerk. [7]

---

**[Summons.]**

*In the Eighth Judicial District Court of the State of Nevada, in and for the County of Churchill.*

The State of Nevada Sends to the Pacific Power Company, a Corporation, Greeting:

You are hereby required to appear in an action commenced against you as defendant by P. R. Sheaff, as plaintiff in the Eighth Judicial District Court of the State of Nevada, in and for the County of Churchill, and answer the complaint therein within ten days after the service on you of this summons (exclusive of the day of service) if served within said county, or twenty days if served out of said county but within said district, or in all other cases forty days; or judgment by default will be taken against you according to the prayer of said complaint. This action is brought to recover a judgment against you, defendant, and in favor of plaintiff for the sum of \$40,000.00 as damages alleged to have been and to



be sustained as the result of physical injuries, pain and mental anguish suffered and to be suffered by plaintiff arising from and caused by the alleged negligence and carelessness of you, defendant, in owning, erecting and maintaining certain pole and wire lines, transformers and substations, together with appliances, appurtenances and equipment, and particularly a certain lightning-arrester near the Nevada Hill substation in Churchill County, Nevada, through and over which electrical currents of high voltage, to wit, about sixty thousand (60,000) volts were being carried in an unsafe, defective and dangerous condition, and in ordering and directing the said plaintiff to work in and about said lightning-arrester, high voltage wires and appliances [8] without notice or proper warning thereby causing plaintiff to receive a violent electrical shock and sustain grave and serious physical injuries and undergo great physical and mental pain and suffering.

All of which will more fully appear from the complaint which is on file in the office of the clerk of said court at Fallon in said county, and to which you are especially referred. And you are further notified that if you fail to appear and answer said complaint, the said plaintiff will take judgment for the said amount, besides interest and costs of suit.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court, at Fal-

on this 10th day of April, A. D. 1912.

[Court Seal]

C. L. NOBLE,

Clerk of the Eighth Judicial District Court of the  
State of Nevada, in and for the County of  
Churchill.

By J. T. Collins,

Deputy. [9]

---

*In the Eighth Judicial District Court of the State of  
Nevada, in and for the County of Churchill.*

P. R. SHEAFF,

Plaintiff,

vs.

PACIFIC POWER COMPANY, a Corporation,  
Defendant.

**Affidavit [of Service of Summons].**

W. J. Box, being duly sworn deposes and says:  
That he is, and was, on the day when he served the  
annexed summons, a male citizen of the United States  
over the age of twenty-one years, and is not a party to  
the above-entitled action; that he received the an-  
nexed summons in the above action on the 12th day  
of May, A. D. 1912, and personally served the same  
upon the said defendant on the said 13th day of June,  
1912, by delivery to J. I. Cain the resident agent of  
said defendant corporation, the copy of said summons  
attached to a true copy of the complaint in said action  
therein *therein* named.

W. J. BOX.

Subscribed and sworn to before me this 13th day of June, A. D. 1912.

[Notarial Seal]

H. F. BREDE,  
Notary Public.

[Endorsed]: No. 429. In the Eighth Judicial District Court of the State of Nevada, *in for* the County of Churchill. P. R. Sheaff, Plaintiff, vs. Pacific Power Company, a Corp., Defendant. Summons. Filed this 18th day of June, A. D. 1912. C. L. Noble, Clerk. By J. T. Collins, Deputy Clerk. Curler & Martinson, Attorneys for Plaintiff, Reno, Nevada.

[Endorsed]: No. 1571. U. S. District Court, Dist. Nevada. Filed August 20, 1912. T. J. Edwards, Clerk. [10]

---

*In the Eighth Judicial District Court of the State of Nevada, in and for the County of Churchill.*

P. R. SHEAFF,

Plaintiff,

vs.

PACIFIC POWER COMPANY, a Corporation,  
Defendant.

**Demurrer.**

Comes now the defendant above-named, and demurs to the complaint of plaintiff on file herein, and for grounds of demurrer specifies:

**I.**

That said complaint does not state facts sufficient to constitute a cause of action.



## II.

That said complaint is ambiguous in this, that it does not appear therein, nor can it be ascertained therefrom, what part or portion of the sum of Thirty Thousand Dollars (\$30,000.00) referred to in paragraph nine (9) of said complaint, and claimed as damages by said plaintiff, is alleged to be due for medical aid and treatment claimed to have been required and needed by plaintiff, and what part or portion thereof is alleged to be due by reason of the infliction of the alleged physical injuries claimed to have been sustained by plaintiff by reason of the alleged negligence and carelessness and willful indifference of defendant. [11]

## III.

That said complaint is unintelligible for the reasons set forth in paragraph II hereof.

## IV.

That said complaint is uncertain for the reasons set for in paragraph II hereof.

WHEREFORE, defendant prays that plaintiff take nothing by its said complaint, and that defendant may go hence dismissed, and for its costs herein incurred.

METSON, DREW & MacKENZIE,

Attorneys for Defendant.

[Endorsed]: Filed July 22, 1912. C. L. Noble, Clerk. By J. T. Collins, Deputy. Metson, Drew & MacKenzie, Attorneys for Defendants, Balboa Bldg., San Francisco.

[Endorsed]: No. 1571. U. S. District Court, Dist. Nevada. Filed August 20, 1912. T. J. Edwards, Clerk.

---

**Order of Court Overruling the Demurrer, as Entered on the Law Journal, of Date February 8th, 1913, at Page 758.**

“1571.

P. R. SHEAFF

vs.

PACIFIC POWER CO.

On motion of Mr. Benj. Curler, it is ordered that his name be entered of record as associate counsel for plaintiff; and that the firm name of Bartlett & Thatcher be entered as associate counsel for the defendant. Thereupon the demurrer was submitted without argument, overruled without an examination of the record, and the defendant given thirty days time within which to answer.” [12]

---

*In the Eighth Judicial District Court of the State of Nevada, in and for the County of Churchill.*

P. R. SHEAFF,

Plaintiff,

vs.

PACIFIC POWER COMPANY, a Corporation,  
Defendant.

**Order for Removal.**

The defendant herein, having within the time pro-

vided by law, filed its petition for the removal of the above-entitled cause to the District Court of the United States in and for the District of Nevada, and having at the same time offered the undertaking required by law upon such removal, with good and sufficient surety pursuant to statute and conditioned according to law.

NOW, THEREFORE, this Court does hereby accept and approve such undertaking, and grants said petition, and does hereby order that this cause be removed for further proceedings and for trial to the District Court of the United States, in and for the District of Nevada, pursuant to the statutes of the United States in such cases made and provided, and that all proceedings in this court be stayed in said cause.

Dated July 22d, 1912.

L. N. FRENCH,  
Judge.

[Endorsed]: Filed July 22, 1912, C. L. Noble, Clerk,  
By J. T. Collins, Deputy. Metson, Drew & Mac-  
Kenzie, Attorneys for Defendant.

[Endorsed]: No. 1571. U. S. District Court, Dist.  
of Nevada. Filed August 20, 1912. T. J. Edwards,  
Clerk. [13]

[Answer.]

*In the District Court of the United States, in and for  
the District of Nevada.*

No. —.

P. R. SHEAFF,

Plaintiff,

vs.

PACIFIC POWER COMPANY, a Corporation,  
Defendant.

Now comes the defendant above named and answering the complaint of plaintiff on file herein states as follows:

I.

Denies that the plaintiff is now or at all or any of the dates and/or times mentioned in the complaint, has been a resident of the City of Oakland, Alameda County, California, but alleges that the defendant at the time of the commencement of this action was, ever since has been, and now is an alien and a subject and citizen of a foreign state, to wit, the Kingdom of Great Britain.

II.

Denies that on the 18th day of July, A. D. 1911, or for a period considerably prior thereto, or subsequent thereto, or at any other time or at all, at the Nevada Hills substation near Fairview in Churchill County, Nevada, or at any other place or at all, the defendant, did negligently or carelessly or recklessly or without regard to the security or per-



sonal [14] safety of its employees or without regard to the personal safety or security of the plaintiff, build or erect or construct or maintain a certain electrical equipment, structure or appliance called or designated as a lightning-arrester to which was attached high potential or any potential primary or other wires carrying electricity or electric current in highly dangerous amounts, potential or voltage, or in an amount of about sixty thousand volts in each of said primary wires or otherwise or at all.

Denies that prior to the 18th day of July, A. D. 1911, or at any other time or at all, this defendant did negligently or carelessly or recklessly or without regard to the safety of its employees, or particularly without regard to the safety of plaintiff herein, build or erect, or on said 18th day of July, A. D. 1911, or at any other time or at all, maintain the lightning-arrester referred to in said complaint, or any of its lightning-arresters in a defective manner or condition; and denies that said or any lightning arrester was insufficient and defective, or insufficient or defective in mode and manner, or mode or manner of construction and design or mode of construction, or design, or was defective and dangerous or defective or dangerous in that high potential primary wires, or the wires or rods or arms or appliances carrying or transmitting electrical currents and energy of high and dangerous amount of voltage or electrical currents or energy of high or dangerous amount of voltage, were not erected, built and maintained, or erected, built or maintained, at a safe or sufficient height and distance, or safe or sufficient height or



distance from the ground, or were, or that any of them was built too near the ground or in too close proximity to the Nevada Hills station-house or transformer station. [15]

On the contrary this defendant alleges that the electrical equipment, structure and appliance called and designated a lightning-arrester referred to in said complaint and the whole of its parts was erected, built, constructed, placed and maintained in the proper and usual method of erection, construction, placing and maintenance of similar electrical equipment and with due regard to the safety of the employees of the defendant including said plaintiff and was free from any defects as a whole or in any of its parts.

### III.

Denies that on the said 18th day of July, A. D. 1911, plaintiff was in the employ of the defendant as a laborer but admits that he was employed as an electrician's helper; denies that said plaintiff was unfamiliar with the work of a journeyman lineman or electrician; denies that plaintiff was unacquainted with or ignorant of the dangers incident to the work of a journeyman lineman or electrician upon or near wires or apparatus carrying electrical current of high voltage and/or potential energy.

Denies that the place where plaintiff was ordered to work was dangerous by reason of the alleged defects set forth in said complaint or by reason of any defects, or by reason of the fact that the live arms of said lightning-arrester were so near the ground and/or in too close or other proximity to the sub-

station building; and denies that said place was a dangerous place in which to work for any other reason or at all, excepting the ordinary danger surrounding all electrical apparatus or appliances; denies that the alleged dangers set forth in said complaint, if any, were totally or otherwise unknown to plaintiff or that he was ignorant of the same.

On the contrary this defendant alleges that the place [16] where the said plaintiff was working was not a dangerous place but was a usual and safe place to work for the purposes of its said business and the employment of plaintiff, excepting for those ordinary dangers surrounding all electrical apparatus or appliances, and alleges that the plaintiff had received full warning and information of these ordinary dangers which were incident to his employment and the place thereof, and had full knowledge of the same.

#### IV.

This defendant has no knowledge or belief upon the subject sufficient to enable it to answer the allegations in Paragraph V of said complaint and therefore and upon that ground denies that plaintiff on said 18th day of July, 1911, or at any other time or at all, while working near and/or around said lightning-arrester, came either in such close proximity to or contact with one of the arms of said arrester whereby a large or any amount of electrical current, to wit, sixty thousand voltage or any other amount passed through plaintiff's body, thereby or otherwise inflicting upon plaintiff a violent electrical shock and severe and dangerous injuries or a violent

electricial shock or severe or dangerous injuries.

V.

Denies that by reason of the alleged negligent and defective or alleged negligent or defective construction of said lightning-arrester, or by reason of its construction and maintenance, or construction or maintenance at any unsafe and insufficient or unsafe or insufficient distance from the ground, or by reason of its nearness to said transformer station or by reason of the dangerous place in which plaintiff was ordered to work, or of receiving said alleged shock and/or charge of electricity, or for any one or either or all of such reasons [17] or at all, the plaintiff sustained a number of serious and/or grievous injuries, or any of the injuries set forth in said complaint.

That this defendant has no information or belief upon the subject sufficient to answer the allegations of paragraph V of said complaint as to the alleged number and variety of said injuries of the plaintiff set forth therein, and therefore and upon that ground denies the existence of the same or any thereof.

This defendant has no knowledge or information upon the subject sufficient to answer the further allegation in said paragraph V contained, that plaintiff at the time of the filing of said complaint required medical and/or surgical treatment, and/or that he will require such and/or surgical treatment for an indefinite or any other period or that the said plaintiff was unable to leave his bed for a period of three months, or is still unable to walk, or that the said plaintiff suffered or still suffers grievous or any



other pain and/or anguish and therefore and upon that ground denies the same.

VI.

This defendant has no information or belief upon the subject sufficient to enable it to answer and therefore denies that the alleged physical or other injuries of the plaintiff are permanent in character and effect, or permanent in character or effect, or that the said or any injuries alleged to have been sustained will during the entire lifetime of the plaintiff or otherwise or at all deprive him of the use of his feet and/or legs, or make it impossible for him to perform manual labor, or continue to cause his great or any physical pain or anguish. [18]

VII.

Denies that by reason of the infliction of said alleged physical injuries on plaintiff, or by reason of the negligence or carelessness or wilful indifference of defendant or otherwise or at all the plaintiff has been damaged by the defendant in the sum of Thirty Thousand Dollars (\$30,000) or in any other sum or at all.

Denies that by reason of the mental or any anguish alleged to have been suffered, or to be suffered by reason of said injuries, or for any other reason or at all this defendant is indebted to the plaintiff in the sum of Ten Thousand Dollars (\$10,000), or in any other sum or at all.

For a first, further and separate affirmative answer and defense to said action, plaintiff alleges:

I.

That the accident and injuries resulting therefrom

to the plaintiff, if any he received, were caused by his own fault, carelessness and negligence, in failing to exercise his natural faculties in a reasonable way to avoid injury and in failing to conduct himself in a reasonably careful and prudent manner while engaged in and about his said employment.

For a second, further and separate answer and defense, this defendant alleges that—

All of the conditions surrounding the plaintiff at the time of the accident alleged in plaintiff's complaint and all of the dangers and risks incident thereto were open and explained to and understood by the plaintiff and plaintiff had full knowledge thereof and such dangers and risks were assumed by him as a part of his employment. [19]

As a separate answer and defense, this defendant alleges that the accident and injuries resulting therefrom to the plaintiff, if any he received, were proximately contributed to by his own fault, carelessness and negligence, in failing to exercise his natural faculties in a reasonable way to avoid injury, and in failing to conduct himself in a reasonably careful and prudent manner while engaged in and about his said employment, and in going to and from his said employment.

WHEREFORE, defendant prays that plaintiff take nothing by reason of his said complaint and that his action be dismissed and that this defendant have judgment for its costs and disbursements herein.

METSON, DREW & MACKENZIE,  
BARTLETT & THATCHER,

Attorneys for Defendant. [20]

State of California,

City and County of San Francisco,—ss.

Floyd Shank, being duly sworn, on oath deposes and says: That he is an officer, to wit, the Secretary of the Pacific Power Company, the defendant above named. That he has read the above and foregoing Answer and knows the contents thereof and that the same is true of his own knowledge, except as to those matters that are therein stated on information and belief and as to those matters he believes it to be true.

FLOYD SHANK.

Subscribed and sworn to before me this 20th day of March, 1913.

[Seal]

FLORA HALL,

Notary Public in and for the City and County of San Francisco, State of California.

[Endorsed]: District Court of United States in and for the District of Nevada. No. 1571. P. R. Sheaff, Plaintiff, vs. Pacific Power Company, Defendant. Answer. Due Service of the Within Answer Accepted this 20th Day of March, 1913. B. F. Curler and Geo. Martinson, Attorneys for Plaintiff. Filed March 22, 1913. T. J. Edwards, Clerk.



[Verdict.]

*In the District Court of the United States for the  
District of Nevada.*

No. 1571.

P. R. SHEAFF,

Plaintiff,

vs.

PACIFIC POWER COMPANY, a Corporation,  
Defendant.

We the jury in the above-entitled cause find for the  
plaintiff and assess the damages at \$15,000.

Dated December 23, 1913.

GEO. PLUMMER,  
Foreman.

[Endorsed]: No. 1571. U. S. Dist. Court, Dist.  
Nevada. P. R. Sheaff vs. Pacific Power Co. Verdict.  
Filed Decr. 23d, 1913. T. J. Edwards, Clerk. [21]

---

[Judgment.]

*In the District Court of the United States for the  
District of Nevada.*

No. 1571.

P. R. SHEAFF,

Plaintiff,

vs.

PACIFIC POWER COMPANY, a Corporation,  
Defendant.

This cause came on regularly for trial at the October term, 1913, of this Court, the parties appearing by their attorneys of record. A jury of twelve persons was accepted by the plaintiff and the defendant, and duly sworn to try the issue; and after hearing the evidence, oral and documentary, introduced by the respective parties, the arguments of counsel, and the instructions given by the Court, and after due deliberation thereon, the jury came into court this day with their verdict in favor of the plaintiff in the sum of Fifteen Thousand (\$15,000) Dollars, and so they all say:

It is therefore considered and adjudged that the said plaintiff have and recover of and from the said defendant, Pacific Power Company, a corporation, the sum of Fifteen Thousand (\$15,000) Dollars, with interest thereon from this date until paid at the rate of seven per cent per annum, together with his taxable costs and disbursements herein incurred, amounting to \$222.80.

Dated and entered December 23d, 1913.

Attest: T. J EDWARDS,

Clerk. [22]

United States of America,  
District of Nevada,—ss.

I, T. J. Edwards, Clerk of the District Court of the United States for the District of Nevada, do hereby certify that the above and foregoing is a full, true, and correct copy of the original judgment now of record in my office; and that the foregoing constitutes and is the judgment-roll in said action.



IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the said court, at my office in Carson City, this the 23d day of December, A. D. 1913, and in the year of our Independence the 138th.

[Seal]

T. J. EDWARDS,  
Clerk.

[Endorsed:] No. 1571. U. S. District Court, District of Nevada. P. R. Sheaff vs. Pacific Power Company, a Corporation. Judgment-roll. Filed December 23d, 1913. T. J. Edwards, Clerk. [23]

---

*In the District Court of the United States, in and  
for the District of Nevada.*

No. —.

P. R. SHEAFF,

Plaintiff,

vs.

PACIFIC POWER COMPANY, a Corporation,  
Defendant.

**Notice of Intention to Move for a New Trial.**

To the Plaintiff in the Above-entitled Action, and  
Messrs. Curler and Martinson, and F. S. Gedney,  
Esq., His Attorneys:

YOU and each of you will please take notice that the defendant in the above-entitled action intends to, and will, move for an order vacating, annulling and setting aside the verdict and judgment in said action, and granting a new trial thereof, and that said motion will be made on the following grounds, to wit:

1. Excessive damages appearing to have been given under the influence of passion.

2. Excessive damages appearing to have been given under the influence of prejudice.

3. Insufficiency of the evidence to justify the verdict.

4. That the verdict is against law.

5. Errors in law occurring at the trial and excepted to by the defendant. [24]

Said motion will be made and based on the minutes of the court in said cause, and the pleadings and proceedings on file in the clerk's office therein.

Said motion will be brought on for argument on the first succeeding motion day of the term at which it can be heard after the giving of this notice.

And you will further take notice that the defendant will be ready to proceed with the argument of said motion on the 2d day of February, 1914, at the hour of 10 o'clock A. M. of said day, in the courtroom of the above-entitled court in the Federal Building, situated in the City of Carson, State of Nevada, or on such other day thereafter as may be agreeable to the Court.

And you are further notified that there is served and filed therewith a motion and petition on behalf of the defendant for a new trial of said action, which motion and petition will be brought on for argument at the time and place above stated.

Dated January 12, 1914.

METSON, DREW & MacKENZIE,  
WM. M. CANNON,  
GEO. B. THATCHER and  
GEO. A. BARTLETT,

Attorneys for Defendant.

(Mo. for new trial hereto attached.—Clerk.) [25]

*In the District Court of the United States for the  
District of Nevada.*

No. —.

P. R. SHEAFF,

Plaintiff,

vs.

PACIFIC POWER COMPANY, a Corporation,  
Defendant.

**Motion for Order Granting New Trial.**

The defendant in the above-entitled action hereby moves and petitions the above-entitled court for an order vacating, annulling and setting aside the verdict and judgment in said action, and granting a new trial thereof on the following grounds, to wit:

1. Excessive damages appearing to have been given under the influence of passion.
2. Excessive damages appearing to have been given under the influence of prejudice.
3. Insufficiency of the evidence to justify the verdict.
4. That the verdict is against law.
5. Errors in law occurring at the trial and excepted to by the defendant.

This motion and petition is made and based on the



minutes of the court in said action, and the pleadings and proceedings [26] on file in the clerk's office therein.

Dated January 12, 1914.

METSON, DREW & MacKENZIE,  
WM. M. CANNON,  
GEO. B. THATCHER and  
GEO. A. BARTLETT,

Attorneys for Defendant.

[Endorsed]: No. 1571. In the District Court of the United States for the District of Nevada. P. R. Sheaff, Plaintiff, vs. Pacific Power Company, a Corporation, Defendant. Notice of Intention to Move for New Trial, and Motion for Order Granting New Trial. Filed January 12, 1914. T. J. Edwards, Clerk. Wm. M. Cannon, Esq., Attorney for Defendant, 58 Sutter Street, San Francisco, Cal. [27]

---

**[Opinion on Motion for a New Trial.]**

*In the District Court of the United States, in and  
for the District of Nevada.*

P. R. SHEAFF,

Plaintiff,

vs.

PACIFIC POWER COMPANY, a Corporation,  
Defendant.

CURLER & GEDNEY, for Plaintiff.

GEO. A. BARTLETT, WM. M. ABBOTT,  
WM. M. CANNON, for Defendant.

FARRINGTON, District Judge:

In passing on the motion for new trial I shall not

attempt to discuss the testimony at length, or but one or two of the numerous assignments of error. The point urged with greatest confidence by defendant is that Sheaff was guilty of contributory negligence, and this, indeed, is the most difficult question presented by the record. In considering it, we must constantly bear in mind that the burden of alleging and proving contributory negligence is on the defendant.

The lightning-arrester on which Sheaff was set to work, and where he was injured, was not only incomplete, but it was unnecessarily dangerous. Placing the arrester so close to the ground was negligent. It is true, the company put a wire fence around the structure, and also posted warning notices; nevertheless, the structure could very easily have been raised several [28] feet higher. There was an attempt on the part of the company to show that this would not be advisable, because employees working on the arrester would then be obliged to use ladders, and thus be in greater danger than if standing on the ground. It occurs to me, however, that a barrier—a board or railing—might easily have been placed between the lower end of the live arms of the arrester and the building in such a way as to have prevented any accidental contact.

The purpose of building and maintaining the arrester was to furnish a vent or escape for dangerous quantities of electricity, which, in excess of the normal and usual voltage might accidentally, or otherwise, find their way onto the line.

The arrester here was so constructed that its three

north arms were attached, one to each of the three high-tension feed wires running into the transformer-house, and consequently, when so attached, each of the three arms was charged with electricity whenever the feed wires were carrying a current. The lower horn or end of each live arm came within about six feet of the ground and  $3\frac{1}{2}$  feet from the south end of the transformer-house. On the south side of the arrester were three dead arms or pipes, ordinarily free from electricity, corresponding to the three live arms on the opposite side. The dead arms nowhere came in contact with the live arms, or near them, except at the gap, where they were about  $3\frac{1}{4}$  inches apart; the theory of the structure being that in the presence of unusual quantities of electricity, the excess would leap from the live arms to the dead arms, and thence by wires connecting the latter to the ground, would be discharged.

In considering the conditions at the time of the accident, we must not overlook the fact that the arrester was incomplete; there was no connection with the ground. Notwithstanding [29] this fact, the connection with the high feed wires had been made, and in consequence, the arrester, though incapable of performing its functions, was charged with the full voltage of electricity then on the high tension wires, something like sixty thousand volts. Thus the arrester had been connected with the source of the electricity, but there was no harmless path by which the excess, if any, could be discharged into the ground. It was to prepare for the connection with the ground that Sheaff was set to work digging



holes under the dead arms of the arrester. He was directed to dig these, and to place in each an iron-bound cement block. If during the time he was so engaged any unusual quantity of electricity had found its way on to the feed wires, the dead arms under which he was at work would probably have been quite as dangerous as the live arms on the other side of the arrester.

After digging the holes, Sheaff passed around the west end of the arrester, intending to go between the arrester and the transformer-house for the cement blocks. Here the accident occurred.

We are looking at the case after the event. It is easy now to see how Sheaff might have avoided the accident, and how defendant with a few precautions might have rendered it impossible. Sheaff, however, cannot be deemed at fault because he failed to take precautions, the necessity of which he neither knew nor appreciated at the time.

The rule given to the jury was that Sheaff must be held responsible, not only for such present knowledge and appreciation as he actually had of the dangerous conditions, but also such as he ought to have had.

The testimony of the witness Campbell that he called superintendent Halpenny's attention to the dangerous and defective condition of the structure, and the further fact that [30] the structure was left as it was, within six feet of the ground, without barriers or protection, and unnecessarily charged with the full current of electricity which was passing over the feed wires, indicates clearly that Mr. Hal-

penny himself did not realize or appreciate what a perilous situation he was leaving for a man who might thereafter be engaged in completing the structure, or repairing it, or who for any purpose might be within the enclosure. This conclusion is not weakened by the location of such signs, indications and warnings of danger as defendant relies on. None of these warnings specifically indicated danger at the lower arm of the arrester next to the transformer-house; or that the arrester had been charged with the full current of electricity before any proper ground had been constructed. Boards nailed from each end of the building to the corresponding end of the arrester would have effectually warned Sheaff or any other person who might be within the enclosure, not to go between the building and the arrester. Nothing of this kind was done.

It is unreasonable to hold Sheaff to any greater knowledge or appreciation of the hazards of this situation than superintendent Halpenny and other electricians under him exhibited when their attention was called to these conditions by Campbell, and when Mr. Halpenny set Sheaff to work digging the holes.

Sheaff testifies he did not know at the time that electricity would jump from the lower end of the live arms of the arrester. There is nothing which indicates that he voluntarily, or even carelessly, brought himself into actual contact with the pipes. The bubble on the lower arm of the arrester from which he received the shock, indicates that the electricity leaped to him, and the nature and location

of the [31] injuries on his person bear out this theory.

It is admitted that Sheaff was employed as an electrician's helper. There is evidence showing that he had had experience with electricity and electrical appliances, and also that he had performed on another arrester the same character of work which he was directed to do on the occasion when he was injured; but my attention has been called to no evidence that on the former occasion the arrester was so connected with high tension wires as to be charged with dangerous quantities of electricity while he was actually digging the holes and placing the cement blocks.

The testimony that Sheaff was directed not to connect the cement blocks with the arms of the arrester, and that he had been warned not to come in contact with live wires, is evidence tending to show that defendant itself realized that Sheaff did not fully know and appreciate the dangers and risks of the work in which he was engaged. He was entitled to believe, unless he knew something to the contrary, that defendant would not expose him to unnecessary danger, and that the structure about which he was called to work would not be unnecessarily charged with dangerous quantities of electricity.

Cases of this kind differ from those which have been cited where the danger was open and apparent to one in the exercise of his ordinary senses. A live wire or a live pipe such as we have in this case, is not like an opening in a floor, or a rapidly revolving wheel, which people may see and avoid. A live wire



is quite as innocent in appearance as a dead one; it gives no warning before it delivers the fatal shock.

I am unable to see how the jury could have come to any other conclusion than that defendant was guilty of gross carelessness; that by the exercise of a slight degree of care on its [32] part the accident to Sheaff could have been prevented; and I also believe that the testimony, though conflicting, is sufficient to support the conclusion reached by the jury that Sheaff was not guilty of contributory negligence.

Defendant insists that the real charge of negligence is in setting an employee at work in a dangerous place; and that several elements are necessary to make such a cause of action, to wit:

1. The place must be dangerous;
2. The employee must be inexperienced and ignorant of the danger;
3. The employer must know of plaintiff's ignorance and inexperience, and
4. The employee must be set at work without instruction or warning of danger.

The objection that the complaint does not set out a cause of action because it fails to allege defendant was ignorant of Sheaff's inexperience and lack of knowledge, does not appeal to me. I cannot reconcile this objection with the position taken by defendant when, during the course of the trial, plaintiff asked to amend his complaint by inserting an allegation therein that defendant knew plaintiff was inexperienced in electricity, and failed and neglected to warn or caution him at the time he was set to work on the arrester.

The motion for new trial will be overruled. Each party will have twenty days within which to take such steps as he may be advised.

[Endorsed]: No. 1571. In the District Court of the United States, in and for the District of Nevada. P. R. Sheaff, Plaintiff, vs. Pacific Power Company, a Corporation, Defendant. Opinion on Motion for New Trial. Filed October 29th, 1914. T. J. Edwards, Clerk. [33]

---

*In the District Court of the United States for the District of Nevada.*

P. R. SHEAFF,

Plaintiff,

vs.

PACIFIC POWER COMPANY, a Corporation,  
Defendant.

**Order [Allowing Defendant to March 6, 1915, to File  
Petition for Writ of Error, etc.].**

Sufficient cause appearing therefor, it is ORDERED, that the defendant in the above-entitled cause have to and including the sixth day of March, A. D. 1915, within which to file petition for Writ of Error, Assignment of Errors, Order Allowing Writ of Error and Fixing Amount of Supersedeas Bond, and Supersedeas Bond on Writ of Error, and take such other steps as it may be advised for all purposes, and that plaintiff have the same time within which to take such steps as he may be advised for all purposes.

Dated Carson City, Nevada, March first, 1915.

E. S. FARRINGTON,  
District Judge.

[Endorsed]: No. 1571. In the District Court of the United States for the District of Nevada. P. R. Sheaff, Plaintiff, vs. Pacific Power Company, a Corporation, Defendant. Order Extending Time to File Petition for Writ of Error, etc. Filed March 1st, 1915. T. J. Edwards, Clerk. Geo. A. Bartlett, Carson City, Nev. Attorney for ————. [34]

---

*In the District Court of the United States, in and for  
the District of Nevada.*

No. 1571.

P. R. SHEAFF,

Plaintiff,

vs.

PACIFIC POWER COMPANY, a Corporation,  
Defendant.

**Petition for Writ of Error.**

Now comes Pacific Power Company, a private corporation, defendant herein, and feeling itself aggrieved by the verdict of the jury and the judgment entered thereupon on the 23d day of December, 1913, whereby it was adjudged that plaintiff have and recover from defendant the sum of Fifteen Thousand Dollars (\$15,000.00) and costs and disbursements in this action, says that in said judgment and in the proceedings had prior thereunto in this cause, certain errors were committed to the prejudice of this de-



fendant, all of which will more in detail appear from the Assignment of Errors, which is filed with this petition;

WHEREFORE, this defendant prays that a Writ of Error may issue in its behalf to the United States Circuit Court of Appeal in and for the Ninth Circuit, and according to the laws of the United States in that behalf made and provided, and that said defendant be permitted to prosecute the same to said mentioned Court, for the correction of errors so complained of, and that a transcript of the record, proceedings and papers in this cause, duly authenticated, may be sent to said last mentioned [35] Court, and that an order be made fixing the amount of a supersedeas bond, which the defendant shall give and furnish upon said Writ of Error, and that upon the giving of said bond all further proceedings in this court be suspended, stayed and superseded until the determination of said Writ of Error by the said United States Circuit Court of Appeals, in and for the Ninth Circuit. And your petitioner will ever pray.

Dated this 4th day of March, 1915.

WILLIAM M. ABBOTT,  
WILLIAM M. CANNON,  
METSON, DREW & MacKENZIE,  
GEORGE A. BARTLETT,

Attorneys for Defendant.

[Endorsed]: No. 1571. In the District Court of the United States in and for the District of Nevada. P. R. Sheaff, Plaintiff, vs. Pacific Power Company, a Corporation, Defendant. Petition for Writ of

Error. Filed March 4th, 1915. T. J. Edwards,  
Clerk. Wm. M. Abbott, Wm. M. Cannon, George A.  
Bartlett. Attorneys for Defendant.

8645 [36]

---

*In the District Court of the United States, in and for  
the District of Nevada.*

P. R. SHEAFF,

Plaintiff,

vs.

PACIFIC POWER COMPANY, a Corporation,  
Defendant.

**Assignment of Errors.**

Now comes the defendant herein, Pacific Power  
Company, a corporation, and in connection with its  
petition for a Writ of Error in the above-entitled  
cause, suggests that there was error on the part of  
the above-entitled court in regard to matters and  
things hereinafter set forth, and specifies the follow-  
ing as errors upon which it will urge its Writ  
1 of Error in the above-entitled action, to wit:

**ASSIGNMENT OF ERRORS.**

**I.**

That during the trial of said action the plaintiff,  
P. R. Sheaff, was called as a witness in his own behalf  
and was asked the following question:

“Mr. GEDNEY.—Q. Now what have you learned  
since that time which informed you of that fact?

A. Well, I have been told by electricians that I  
would get—that anybody would get a shock there.”

[37]

That defendant objected to this question and answer as immaterial and as hearsay, and moved to strike out the answer as hearsay, immaterial, irrelevant and incompetent. Said objection was  
2 overruled and said motion to strike out said answer denied, to which defendant then and there duly excepted, which ruling the defendant now assigns as error on the part of the trial court.

II.

That the following question was then propounded to said witness:

“Q. Now state the substance of that writing as near as you can state it?

A. The paper stated that if I would sign it, and release the Pacific Power Company from all obligations, that they would pay my expenses for six months from the date of my injury, and would also pay me half wages for six months.”

3 That defendant objected to said question and answer as immaterial, irrelevant and incompetent, and upon the further ground that no foundation had been laid, which objection was overruled and the defendant then and there excepted thereto. That the Court erred in allowing said witness to answer said question and in overruling said objection.

III.

That during the trial of said action, Lee Campbell was called as a witness on behalf of plaintiff and was asked the following question:

“Mr. CURLER.—Q. What was said?

A. As near as I can place it word for word I  
4 made the remark that that was criminal carelessness to leave that lightning-arrester that



low, that close to the ground.”

That defendant objected to said question and answer as [38] immaterial, irrelevant and incompetent and that no foundation had been laid therefor, which objection was overruled and the defendant then and there excepted thereto, which ruling the defendant now assigns as error on the part of the trial Court.

#### IV.

That thereafter during the examination of said witness the following proceedings were had and taken:

“Q. What else was said further than that, and by whom?

5       Mr. CANNON.—Before this question is answered, let it be assumed, if the Court please, that I renew my objection to each of these questions along this line, as they are asked.

The COURT.—To the whole matter in relation to this conversation, unless it goes outside the lines I have already indicated.

Mr. CANNON.—I move to strike out this answer on the ground it is incompetent, irrelevant and immaterial, and hearsay.

The COURT.—Suppose you leave that motion until the conversation is in.

Mr. CANNON.—So long as we will not be considered to have waived it.

6       The COURT.—You will not be considered to have waived it, and after it is in, you can make such motions as you wish.

Mr. CANNON.—And consider each question ob-

jected to on the grounds already stated, and on the further ground there is no proof here at this time that the construction was in fact defective in any way, shape or form.

Mr. CURLER.—We expect to show that later on, your Honor. We cannot show it all at once. What was the last question?

Q. (The reporter reads the question.)

A. Well, it was just a general remark  
7 amongst the bunch of us there, Mr. Halpenny  
and Mr. Greenleaf, and Mr. Herring and myself, [39] in regard to the height of that from the ground.

The COURT.—Q. What did each one say?

A. To bring the exact words down—

Q. As near as you can give it.

A. I made the remark it was dangerous and careless to go away and leave that in that position, and Mr. Halpenny stated to Mr. Greenleaf; he says, 'Are you going to put that up now and leave it that way?' and Mr. Greenleaf says, 'We will have  
8 to put something here; it will not be safe to leave it any other way, without a lightning-arrester here, or some protection on this end of that line.' That was the remarks, I believe, as far as the conversation was concerned. They had a talk between themselves, but I don't just recollect what it was, something in regard to lightning.

Q. Where was Mr. Sheaff at this time, if you know?

A. He was generally all around, first one place and then another, around the building; but I believe at

the time I made this remark, I think he was standing  
around the corner on this side, doing some-  
9 thing with the wire.

Mr. CANNON.—By ‘this side’ you mean  
what, the north side?

A. The north side of the building; or he might have  
been just over the hill there; I don’t know just where  
he was at the time of the conversation; I don’t know  
just exactly where he was at the time I made this  
remark.

Mr. CURLER.—Q. Was he present with you and  
these other men at that time?

A. Not at the time that I made this remark, to the  
best of my knowledge; he may have been di-  
10 rectly behind me, but I didn’t see him; he  
wasn’t in my sight at the time I made this re-  
mark.

Mr. CAMPBELL.—Basing your opinion upon  
your experience with electricity—

Mr. CANNON.—That is all of the conversation, is  
it, Judge? [40]

Mr. CURLER.—Yes.

Mr. CANNON.—Your Honor, I move to strike out  
all the conversation as incompetent, irrelevant and  
immaterial, and hearsay; no foundation laid for its  
introduction; no evidence of any defective character  
of the lightning-arrester itself; and as to whether or  
not it was defective or unscientific in any particular  
is a false quantity in this case, and has nothing  
11 to do with it; and is merely the expression of  
the opinion of the witness on the stand.

The COURT.—The motion is denied.”



That defendant thereupon duly excepted to the refusal of the Court to strike out said conversation, and the refusal of the Court to strike out said conversation is hereby assigned as error.

## V.

That thereafter, and during the examination of said witness, the following proceedings were had and taken:

“Mr. CAMPBELL.—Basing your answer upon your experience as an electrician, was the lightning-arrester a standard construction with reference to the height of the live ends of the lightning-arrester?

Mr. CANNON.—We object on each and all of the grounds heretofore stated; and on the further ground the question as to whether it is standard or not standard is absolutely immaterial; the rule of law applicable to cases of this kind being, if the question of the construction is material at all, that it need only be reasonably fit for the purpose intended; it does not have to be of the latest design or construction; it does not have to be of any standard construction; it must only be, considering all the circumstances surrounding the particular place where it is to be used, and the manner in which it is to be used, reasonably fit for the purpose intended. [41]

The COURT.—There is no question but what that is the rule. One is not required to use the very best construction, or the very latest devices, but to use what an ordinary prudent man engaged in the same business would have used at that time. I think this

question tends to bring that out, and I will allow the question."

That the action of the Court in overruling  
14 said objection and allowing said question to be asked and answered was thereupon duly excepted to and is here assigned as error.

## VI.

That thereafter during the examination of said witness, the following proceedings were had and taken:

"Mr. CURLER.—Q. Well, Mr. Campbell, what is the usual height of the live ends of a lightning-arrester of this kind among men who are reasonably careful in the construction?"

Mr. CANNON.—Object to that, if the Court please, upon each and all of the grounds heretofore stated; and upon the further ground that it calls for  
the opinion of this witness as to what other  
15 people do who are reasonably careful, as to whether other people are reasonably careful. And, furthermore, that it is too general; it is very plain that there might be one rule applicable to a lightning-arrester in a city or town where children are apt to get into contact with it, and an absolutely other and different rule, on the top of a hill in the desert or uninhabited portion of the State, where people are not likely to come in contact with it.

The COURT.—The objection will be overruled.

Mr. CANNON.—We note an exception.

(By direction the reporter reads the question.)

16 A. I will have to answer that question by observation that I have saw along this power

line. They have those lightning-arresters—some places they are seven feet from the ground, and [42] some places twelve feet; in my opinion, I should not think they were safe less than twenty or twenty-two feet.”

That the action of the Court in overruling defendant’s said objection and allowing said question to be asked and answered was thereupon duly excepted to and is hereby assigned as error.

### VII.

That during the examination of said witness,  
17 the following answer was given to a question propounded said witness :

“A. I will have to answer that question by observation that I have saw along this power line. They have those lightning-arresters—some places they are seven feet from the ground, and some places twelve feet; in my opinion, I should not think they were safe less than twenty or twenty-two feet.

Mr. CANNON.—I move to strike out the answer of the witness and object to all of the remarks heretofore stated, and to strike out that part which relates  
to his opinion as not responsive to the question  
18 because it called for the usual construction.

The COURT.—The latter part of the answer may be stricken out on the ground it is not responsive to the question. The motion as to the remainder of the answer will be denied.”

That the action of the Court in refusing to strike out the remainder of said answer was duly excepted to and is hereby assigned as error.



## VIII.

That during the examination of said witness, the following question was asked and answered:

“Mr. CURLER.—Q. Mr. Campbell, in your  
19 experience prior to the time that you observed  
this structure—this lightning-arrester—had  
you ever seen a lightning-arrester of this character  
constructed so that the live ends of the lightning-ar-  
rester were as close to the ground as this one is?  
[43]

A. Never.”

That defendant objected to this question and answer upon the grounds of former objection, to which the Court made the same ruling, and the defendant then and there duly excepted thereto, which ruling the defendant now assigns as error.

## IX.

That during the examination of said witness, the following question was asked and answered:

“Mr. CURLER.—Q. Mr. Campbell, did you ever  
see any other lightning-arrester constructed  
20 on the same principle as this one is?

A. No, sir, not outside of this present power line.”

That defendant objected to this question and answer upon the same grounds as had been urged to the previous question and answer, which objection was overruled, and the defendant then and there duly excepted thereto, which ruling the defendant now assigns as error on the part of the trial Court.

## X.

That during the examination of said witness, the

following question was asked and answered:

“Mr. CURLER.—Q. Where have you seen  
21 lightning-arresters constructed on the same  
principle as this?

A. I saw one in Aurora.”

Said question and answer were objected to on the same grounds as the former questions to the same effect, which objection was overruled, and the defendant then and there excepted thereto. That the Court erred in allowing said witness to answer said question and in overruling said objection.

#### XI.

That during the examination of said witness, the following question was propounded to said witness:  
[44]

“Mr. CURLER.—Q. Do you know from your experience as an electrician whether the distance between the live and dead end of the horns of  
22 the arrester is determined by the amount of voltage the line carries?

A. I do, that is the way they measure it.”

That defendant objected to this question and answer on the ground that it was incompetent, irrelevant and immaterial and outside of the issues, which objection was overruled, and the defendant then and there duly excepted thereto, which ruling the defendant now assigns as error on the part of the trial Court.

#### XII.

That during the examination of said witness, the following proceedings were had and taken:

“Q. Mr. Campbell, is this the ordinary type of lightning-arrester, generally used?

23 Mr. CANNON.—We object on the ground it calls for the opinion of the witness, and is incompetent, irrelevant and immaterial, and outside of any issue in this case.

The COURT.—Well, he has testified that he never saw this type except in certain places already, has he not? I think he has testified to seeing other types of arresters in other places. It seems to me he has already answered that in response to your question. You can ask the question, but it seems to me it has already been answered.

24 Mr. CURLER.—I would like to have the question answered.

The COURT.—Very well.

Mr. CANNON.—We note an exception. Would your Honor allow me to add one other ground to my objection; namely, that the only points made in the pleadings as to any defect in this arrester, is as to its distance from the ground. There is not any charge in the complaint, as I have read it, that states that [45] the lightning-arrester itself is a defective construction, or not one of general use. Let me read the allegation in the complaint. (Reads allegation III in the complaint.)

(Argument.)

25 The COURT.—Well, I am exceedingly doubtful about it, Judge Curler, but you are so confident about the matter, I will allow you to put it in. The defendant may have an exception.

A. That is used by some companies.”



The action of the Court in overruling said objection and allowing said question to be answered was there-upon duly excepted to and here assigned as error.

XIII.

That during the examination of said witness, the following question was propounded to said witness:

“Mr. CURLER.—Q. Can you state whether  
26 or not it is in general use by companies engaged in carrying on business of transmitting electricity in high voltage over wires?

A. Not in use except by the present company, the Pacific Power Company, or the Nevada-California Power Company, to my knowledge.”

Defendant objected to this question and answer on the same grounds as were urged to the prior question and answer, and on the further ground that it called for the opinion of the witness as to what constituted general use, and required him to testify outside of his own experience, and that anything outside of his own experience would be hearsay  
27 upon the question of general use. Said objection was overruled, and the defendant then and there duly excepted thereto, which ruling the defendant now assigns as error on the part of the trial Court.

XIV.

That during the examination of said witness, the following question was propounded:

“Mr. CURLER.—Q. If this arrester were constructed as was the one shown you in the picture, is it not a fact that the horns [46] would curve from here—from the line up here?

A. That would have to be above those, according to that diagram there, in regard to the arc, showing a break in the arc above the line, according to this cut here; it is relative to the position of the framework on which it is constructed; you have to make the connections from the line to your frame in order to clear your horn gaps.”

Defendant objected to this question and answer as leading and suggestive, which objection was overruled, and the defendant then and there excepted thereto, which ruling the defendant now assigns as error on the part of the trial Court.

### XV.

That during the examination of said witness, the following proceedings were had and taken:

“Q. Now what was the voltage at about half-past ten o'clock on the line at Wonder, as shown by the volt-meter there?”

Mr. CANNON.—Objected to on the ground it is incompetent, irrelevant and immaterial, because the controlling thing in this case is the voltage on this particular live wire on the arrester; and we contend there is a vital difference from the voltage at Wonder and on the main line.

Mr. GEDNEY.—“They can show the difference.

Mr. CANNON.—I think they ought to show the voltage at that particular place.

Mr. CURLER.—We cannot show it all at once; that depends on the voltage on the main wire.

The COURT.—You may ask the question. I presume you will follow it up?

Mr. GEDNEY.—Yes.

A. Approximately fifty-five thousand volts between wires.”

That the action of the Court in overruling said objection and allowing said question to be answered was thereupon duly excepted to, and action of said Court is here assigned as [47] error.

XVI.

The following question was then propounded to the witness, and the following proceedings were had and taken:

“Q. If the volt-meter at Wonder showed  
31 fifty-five thousand volts, the volt-meter at  
Fairview would show practically the same  
voltage?”

Mr. CANNON.—I object to that on the ground no foundation has been laid for the question. If counsel will concede that Mr. Halpenny is an expert on this subject, I will withdraw my objection; otherwise I think they should prove that he is an expert.

Mr. GEDNEY.—I hardly think that is a question for an expert.

Mr. CANNON.—It is a pure matter of opinion, that can only be answered by an expert.

The COURT.—Read the question.

(The reporter reads the question.)

32 The COURT.—Well, if he says he knows, I  
will allow him to answer it.

A. You understand this would not be read directly fifty-five thousand, the meter would not indicate that; you would have to take account of the transformer ratios, between the one hundred and ten volts



which the meter would indicate, and the potential on the line. Considering that is understood, the meters would indicate very nearly the same.”

That the action of the Court in overruling said objections and allowing said question to be asked and answered was thereupon duly excepted to, and is here assigned as error.

### XVII.

33 That during the trial of said action, J. G.

Scrugham was called as a witness on behalf of the plaintiff, and was asked the following question:  
[48]

“Q. Basing your answer upon your technical knowledge and experience, state whether or not a lightning-arrester with the live arm of the lightning-arrester within five feet nine inches of the ground is a safe construction?

A. I do not regard it as a safe construction.”

That defendant objected to this question and answer on the ground it was incompetent, irrelevant, immaterial, no foundation laid for it, not a  
34 proper subject for expert testimony, and outside of the issues of the case, which objection was overruled and the defendant then and there duly excepted thereto, which ruling the defendant now assigns as error.

### XVIII.

Thereafter the following proceedings were had and taken:

“Mr. CURLER.—Q. Assuming that the lines were carrying fifty-five thousand volts of electricity, as between two of the lines, and the voltage between

the live end of the lightning-arrester and the ground,  
was thirty-two to thirty-three thousand volts, how  
near to the live arm of the lightning-arrester  
35 would a person have to come before he would  
receive a discharge?

A. Under normal conditions, approximately an  
inch and three-quarters, under abnormal conditions,  
it might jump two, three or four inches, and so forth.

Q. What do you mean by abnormal conditions?

A. A voltage higher than normal between the line  
and the ground.

Mr. CANNON.—I move to strike out the answer  
as to any other distance than one and three-quarters  
inches, on the ground there is no testimony here as  
to abnormal conditions.

Mr. CURLER.—Not at the present time,  
36 if your Honor please, that may be true; but as  
to whether there was an abnormal condition or  
not may be deduced from other testimony that will  
be presented in this case.

Mr. CANNON.—It is outside of the issues.

The COURT.—I will allow it to stand.” [49]

Defendant thereupon moved to strike out the  
answer as to any other distance than one and three-  
quarters inches, on the ground that there was no  
testimony introduced prior thereto as to abnormal  
conditions, and because it was outside of the issues.

The Court allowed the answer to stand, to  
37 which the defendant then and there excepted,  
and the action of the Court is here assigned as  
error.

## XIX.

During the examination of said witness, the following question was propounded to him:

“Q. Suppose that Mr. Sheaff received eight electrical burns on the left shoulder and three electrical burns, one on the top of the right shoulder and two below that, on the back, from one discharge at this one occurrence, in your opinion how would you account for those several burns?

A. The number of burns was probably due to his falling—different surfaces of his body presented different points; the easiest path for  
38 the arc to travel through his body to the ground. We take two carbon points; two wires with an arc passing between them; that arc does not remain constant in one place; it travels usually upward; or, if there is no wind blowing, it may travel in various directions, depending on the air currents.”

Said question and answer were objected to by defendant on the ground it was incompetent, irrelevant and immaterial, no foundation laid for it, and entirely speculative, not the subject of expert testimony, and on the further ground that the witness had not qualified as an expert on the subject, and  
39 that it assumed that the plaintiff's electrical burns were received with one contact or at the same time, which objection was overruled and the defendant then and there excepted thereto, which ruling the defendant now assigns as error on the part of the trial Court. [50]

## XX.

During said trial Clifton Herring was produced as



a witness on behalf of the plaintiff and was asked the following question:

“Q. Does or does not a lineman furnish his own equipment or tools?

A. Usually he does.”

Said question and answer were objected to  
40 on the ground it was incompetent, irrelevant  
and immaterial, and on the further ground  
that it did not involve any question of custom with  
this defendant, or as to whether it was an invariable  
matter, or whether a person can be a lineman with-  
out these or not. The objection was overruled, and  
the defendant then and there duly excepted thereto,  
which ruling the defendant now assigns as error on  
the part of the trial Court.

XXI.

During the examination of said witness, the follow-  
ing question was propounded to him:

“Q. State that conversation as near as you can re-  
member it.

41 A. Mr. Campbell remarked that it was  
criminal carelessness to build an arrester with  
the horns so close to the ground; that the average  
man could easily come in contact with it; and Mr.  
Halpenny remarked that he felt it was not safe, but  
Mr. Poole had instructed him to go ahead and build  
an arrester with what material he had, and he had  
to protect the lines from lightning, and as soon as he  
could get the other arrester there it would be in-  
stalled in its place.”

Defendant objected to this question and answer on

the ground it was incompetent, irrelevant,  
42 immaterial and hearsay. The objection was  
overruled and the defendant then and there  
duly excepted thereto, which ruling the defendant  
now assigns as error on the part of the trial Court.  
[51]

## XXII.

During the examination of said witness, the following question was propounded to said witness:

“Q. And you were a four dollar a day man, were you not?      A. No, not then.”

The Court of its own motion struck out said testimony with reference to the four dollars a day, and the answer also, over the objection of defendant.

Said action of the Court was then and there  
43 duly excepted to, which ruling the defendant  
now assigns as error on the part of the trial  
Court.

## XXIII.

Thereafter during the examination of said witness, the following proceedings were had and taken:

“The COURT.—I have been unable to find anything in the direct examination of this witness with reference to his wages and the capacity in which he was employed. When the question was asked Mr. Gedney objected to it on the ground it was not within the issue, and not cross-examination. That question  
and answer will be stricken out. And this last  
44 question, ‘And you were a four dollar a day  
man,’ and the answer ‘Not then’ will be  
stricken out. Both questions and answers will be  
stricken out as not a part of the cross-examination.”

The action of the Court was then and there duly excepted to, which ruling the defendant now assigns as error on the part of the trial Court.

XXIV.

That during the trial of said action, Dr. George M. Gardner was produced as a witness on behalf of the plaintiff, and during his examination the following proceedings were had and taken:

45       “(Witness continuing.) The effect on the nerves and blood vessels in that foot has been a lack of sensation in the scar [52] tissue right here (showing on the foot of plaintiff), right around in this region. On the top of the foot, the extensor surface is also anaesthetized; you can take and stick a pin in it. Do you want me to stick it in?

Mr. CURLER.—No, never mind.

The WITNESS.—You cannot hurt it any way.

(Witness continuing.) I find the tendon of Achilles solid. Outside of the contraction; it  
46       is all there. That tendon is very inelastic now.

That which you showed me is a photograph. I know this is a photograph of Mr. Sheaff's back. It was taken on September 6th, 1911. That is a fair representation of the appearance of the right shoulder of Mr. Sheaff's back at that time. I was present when the photograph was taken.

Mr. CURLER.—We offer it in evidence.

Mr. CANNON.—No objection.

The COURT.—Have you others?

Mr. CURLER.—Yes.

The COURT.—Hand them all to counsel, and the



one you wish the jury to look at may be passed around now.

Mr. CURLER.—Have you any objection to those photographs?

47 Mr. CANNON.—Yes, I have an objection to these photographs in this, that apparently they are photographs of parts of the body, and with bandages and other evidences of treatment by physicians; in other words that it don't purport to show the bare evidence, without regard to the dressings, or whatever has been done by the physician, or others, in connection with it. I did not object to the other photograph, because it presented the bare back, but these photographs present some surgical conditions in connection with them, and I therefore ob-  
48 ject on those grounds; and on the additional ground that they can serve no useful purpose in this case, other than create some sympathetic consideration. [53]

The COURT.—The objection will be overruled."

Said action of said Court was then and there duly excepted to, and said action is here assigned as error.

## XXV.

That thereafter, during the examination of said witness, the following proceedings were had and taken:

“(Witness Continuing.) These photographs were all taken on the sixth day of September, 1911. I was present at the time. They are fair representations of what they purport to show as it appeared at that time.

49 Mr. CURLER.—I think I will have these marked separately.

Mr. CANNON.—Are you going to offer them separately, or have you offered them yet?

Mr. CURLER.—I offer them all in evidence, and I offer them separately so as to designate each one for the purposes of the record.

Mr. CANNON.—I object to each and all of these photographs being admitted in evidence; and object to each of them on each and all of the grounds heretofore stated.

The COURT.—The objection will be overruled.”

Said photographs were marked “Plaintiff’s  
50 Exhibits Nos. 4–5–6–7 and 8, respectively, and shown to the jury.

The admission of said photographs in evidence was thereupon duly excepted to, and is hereby assigned as error.

## XXVI.

That thereafter during said trial, the following proceedings were had and taken:

“Mr. CURLER.—Then we offer, if your Honor please, the mortality table, the American Mortality Table, and particularly, the expectancy table, insured lives, constructed from the mortality table, and found on page 482 of the book, designated ‘Blue  
51 Book, Rates and Guarantees’ of the Equitable Life Assurance Society, [54] being the same in all societies; and particularly that portion which shows the expectancy of life of a man twenty-six years of age.

Mr. CANNON.—We object to this, if your Honor

please, on the ground it is incompetent, irrelevant and immaterial; that there is nothing in the complaint which would raise an issue with respect to the expectancy of life of the plaintiff; that there is no allegation in the complaint with respect to earning capacity of the plaintiff to earn, the amount he had been earning, what he was earning at  
52 the time of his accident; and no claim in the complaint for lost earnings after the accident, up to the present time, or at any time in the future; that this character of testimony can only be relevant as being some evidence which the jury may take into consideration, and give whatever weight they determine it is entitled to, or none at all, as bearing upon the loss of future earnings on the part of the plaintiff; and there is no issue made in this complaint that I have been able to discover as to any loss of future earnings, or any loss of past earnings.

53 Mr. CANNON.—I would like to add also to my objection that these mortality tables are not admissible at all on a case of personal injuries, except in cases where there is a total incapacity to labor; where the evidence shows there is any capacity to labor, then they are not admissible.

The COURT.—Is that all?

Mr. CURLER.—I offer the Annuity Table, found on page 484.

The COURT.—And you offer also the table of Expectancy of Life.

Mr. CANNON.—We make the same objection on



each and all of the grounds stated to the offer  
54 of the Annuity Table. This is the first time  
in my experience a table like this has been  
offered; they generally content themselves with the  
offer of the Expectancy Table. [55]

Mr. CURLER.—I would like, if there is any question in the Court's mind on this subject, to produce some authorities.

The COURT.—Very well.

The COURT.—With reference to those annuity tables and the expectancy of life table, the annuity table will not be admitted, but the table of expectancy of life will be. There is no objection made to that as to its correctness?

Mr. CANNON.—No, but I did not require  
55 counsel to prove any foundation for its admissibility.

Mr. CURLER.—If your Honor please, I have mislaid the only table I have. Possibly counsel will admit that the expectancy of life of a man twenty-six years old is 38.1 years.

Mr. CANNON.—I think that is what it is. We note an exception to the ruling of the Court.

The COURT.—Let the exception be noted."

The action of the Court in allowing said expectancy table to be admitted is here assigned as error.

## XXVII.

That during the said trial, Charles H. Stone  
56 was produced as a witness on behalf of the plaintiff, and during his examination the following proceedings were had and taken:

"Mr. CURLER.—We desire to prove that the

shoe that the plaintiff wore when he was measured by Mr. Stone was the same shoe that he wore on his left foot the day of the accident, and that it is in the identical condition now that it was at that time; in other words, that it has not been worn since that day.

Mr. CANNON.—If it is stated as a fact, I  
56 will not object to it on that ground, but simply object to it on the ground it is incompetent and irrelevant.

The COURT.—Then it is admitted to be true, provided it is competent. [56]

Mr. CANNON.—Provided it is relevant, material and competent.

The COURT.—Well, your objection will be overruled, and it will be admitted.”

The action of the Court in overruling said objection and admitting said testimony was then and there duly excepted to and said ruling of the Court is here assigned as error.

## XXVIII.

That thereafter, and after all of the testi-  
57 mony of plaintiff had been introduced and the plaintiff had thereupon rested, the *plaintiff* made his motion for a nonsuit and for a peremptory instruction of the jury requiring and directing the jury to return a verdict for the defendant on the ground that the complaint failed to state a cause of action; upon the ground that the evidence failed to prove the material allegations of the complaint; upon the ground that the evidence failed to show that the lightning-arrester described in the complaint and in the evidence was defective in the particulars alleged in the

complaint, or any of them, or defectively built  
58 or constructed or maintained, or that plaintiff was injured by or through any such defect; upon the ground that the evidence failed to show that the defendant put the plaintiff at dangerous work, or that the plaintiff was inexperienced in the work in which he was placed or ignorant of its danger, or that the defendant knew or ought to have known of plaintiff's ignorance or inexperience, or that plaintiff was placed at any such work without any or sufficient warning or instruction, or that plaintiff was injured by or through any such matters or things; upon the ground that the evidence failed to show that plaintiff's injuries were proximately caused by or through any defect or defects of the lightning-arrester or its construction or maintenance; upon the ground that the evidence failed to show that the plaintiff's [57] injuries were proximately caused by any act or omission of the defendant in setting plaintiff at work or directing the work at the time and place complained of, or in failing to warn him of the dangers thereof, or in failing to instruct him as to his duties, or how to avoid the dangers thereof; upon the ground that the evidence failed to show that  
60 plaintiff's injuries were proximately caused by the negligence alleged in the complaint, if any; upon the ground that the evidence showed that the plaintiff's injuries were proximately caused by the separate, independent, intervening cause for which plaintiff was alone responsible; upon the ground that the evidence showed that the danger to



which plaintiff was exposed was incidental to his employment and that he assumed the risk of the same and the responsibility thereof; upon the ground that the evidence showed that the danger to which plaintiff was exposed was an open and obvious one;

that he was presumed to have known and appreciated the same; and that he therefore  
61 assumed the risk thereof; upon the ground that the evidence showed that the danger to which plaintiff was exposed was one which should have been observed and avoided by a person of plaintiff's experience, knowledge, intelligence and capacity, and that plaintiff therefore assumed the risk thereof; upon the ground that plaintiff was an experienced workman and that the dangers to which he was exposed in and about the place he was set at work were such only as were incidental to his em-  
62 ployment, and should have been observed and avoided by him, and that he assumed the risk thereof; upon the ground that the plaintiff did know and appreciate the dangers to which he was exposed, and that he therefore assumed the risk thereof; upon the ground that the plaintiff assumed the risk of the dangers to which he was exposed in this, to wit: That upon completing his work of digging the hole in question, he voluntarily chose an unsafe, insecure and highly dangerous way to [58] leave his place of work and the enclosure surrounding the same, which way was known or ought to have been known to him to be dangerous, instead of  
63 a perfectly safe way of which he fully knew; upon the ground that the evidence failed

to show whether the plaintiff's injuries were caused by plaintiff's coming into actual contact with a live wire of the defendant, or the electricity jumping from such live wire to the plaintiff's body, while his body or any part thereof was within one and three-quarters or one and seven-eighths inches from such wire, or while plaintiff's body was within four and one-quarter or four and one-half inches from each

live wire, or by coming into contact with or  
64 near the dead side of the lightning-arrester while it was carrying an overload or surge, from any cause, or whether there was any overload or surge, or what was the cause of such overload or surge, if any, and that, therefore, negligence of the defendant was not proved, and the causal connection between the negligence alleged, if any, and the injury, was not proved, but was merely speculative; upon the ground that plaintiff's injuries were proximately caused by his own contributory negligence; upon the ground that plaintiff's injuries were proximately contributed to by his own negligence; upon the

ground that the plaintiff's injuries were proximately caused or contributed to by his failure  
65 to exercise ordinary care to avoid injury to himself; upon his failure to heed the warning of danger given by the fence around the lightning-arrester and by the danger signs upon the substation door and the switch-pole, both of which were or could have been observed by him by the exercise of ordinary care on his part, and by his failure to use ordinary care to keep away from the live wires in

the lightning-arrester when he knew, or ought  
66 to, in the exercise of reasonable care, to have  
known, by the purring of the transformers,  
and other facts and circumstances then known to  
him, that said wires were [59] alive and carry-  
ing a high voltage, and by his voluntary action in  
coming into close proximity or in contact with said  
live wires, when he could have departed from said  
enclosure by another and perfectly safe route then  
known to him, and by his failure in other respects  
to exercise the care imposed on him by law in view  
of his age, experience, intelligence, capacity and  
powers of observation; also upon the ground that  
the accident to the plaintiff could not have  
67 been reasonably foreseen or anticipated by  
the defendant.

Defendant hereby refers to the bill of exceptions  
heretofore filed in this cause, and prays that for the  
purpose of pointing the error here complained of,  
the same be considered herein incorporated as fully  
as though herein reiterated *in haec verba*.

Said motion for the nonsuit was thereafter argued  
upon each and all of the grounds urged, whereupon  
the Court denied said motion for the nonsuit, to  
which ruling the defendant then and there  
68 excepted, and the action of the Court in deny-  
ing said motion for a nonsuit is here assigned  
as error.

## XXIX.

That during the trial of said action, P. W. Green-  
leaf was produced as a witness on behalf of the plain-  
tiff, and was asked the following question:



“Q. They are either connected or in the process of connection, are they not?   A. I think they are.”

Defendant duly objected to said question and answer, and the Court overruled said objection, which action of the Court was then and there duly excepted to and is now assigned as error. [60]

XXX.

That during the trial of said action R. H. Halpenny was produced as a witness on behalf of defendant; said witness was asked the following question:

“Q. (By defendant.) State whether or not you placed Mr. Sheaff in charge of any construction work there, near or at the Wonder substation.”

Said question was objected to by plaintiff on the ground it was leading and called for the conclusion of the witness and not a statement of fact. The Court sustained said objection, and to the ruling of the Court the defendant then and there excepted, which action is here assigned as error.

XXXI.

That during the examination of said witness, the following question was propounded:

“Q. Was there any agreement or understanding there that he was to act as a lineman?

A. Not at that time.”

Said question was objected to on the ground that it called for the opinion and conclusion of the witness. Said objection was overruled by the Court, and then and there duly excepted to, and is hereby assigned as error.

XXXII.

That during the examination of said witness, the

following question was propounded to him:

“Q. An ordinary man looking at that thing  
71 could not tell whether that was cracked or not,  
could he? I want just to get at what the  
insulator is, that is all.

A. By looking at it he might or might not.”

Said question and answer were thereupon objected to by defendant and said objection overruled by the Court. To the action of the Court in overruling said objection, defendant [61] then and there duly excepted, and said exception is here assigned as error.

### XXXIII.

That during the examination of said witness, defendant was asked the following question:

72 “Q. If that man left his station would there  
be any control or regulation?

A. The amount of current was not regulated there directly.”

That defendant objected to the last question and answer as conjectural, incompetent, irrelevant, immaterial, outside of the evidence, which objection was overruled and defendant then and there duly excepted thereto. That the Court erred in allowing said witness to answer said question and in overruling said objection.

### XXXIV.

That during the examination of said witness, the following question was propounded to him:

73 “Q. Now, if there was a sudden throwing  
off of power, and that man didn’t immediately  
regulate that needle valve, it would cause a surge on

the line, would it not?

A. Under the conditions then I would not say it would cause a surge; the loads were not heavy enough."

That defendant objected to the said question and answer as incompetent, irrelevant, immaterial and outside of the issues, which objection was overruled, and the defendant then and there excepted thereto. That the Court erred in allowing said witness to answer said question and in overruling said objection.

XXXV.

That during the examination of said witness, the following question was propounded to him:

74 "Q. If there was a surge on this line, caused by the sudden falling off of power, it would make this handle here a [62] dangerous thing to have hold of, wouldn't it, by reason of the fact that it might break one of the insulators?

A. It would be very remote."

That defendant objected to said question and answer as incompetent, irrelevant, immaterial and outside of the issues, which objection was overruled, and the defendant then and there duly excepted thereto. That the Court erred in allowing said witness to answer said question and in overruling said objection.

XXXVI.

75 That during the examination of said witness the following question was propounded to him:

"Q. Very remote, but it is possible, even probable, isn't it? A. No, not probable by any means."



The defendant objected to said question and answer on the ground it was incompetent, irrelevant, immaterial, and outside of the issues, which objection was overruled, and the defendant then and there excepted thereto. The action of the Court in allowing said question to be asked and answered, and in overruling said objection, is here assigned as error.

### XXXVII.

76 That during the examination of said witness, the following question was propounded to him:

“Q. And that would make this handle a dangerous contrivance, would it not?

A. It might be considered dangerous.”

That defendant objected to said question and answer as immaterial, incompetent, irrelevant, and outside of the issues. The objection was overruled, and defendant then and there duly excepted thereto, which ruling the defendant now assigns as error, on the part of the trial Court.

### XXXVIII.

That during the examination of said witness, the following question was propounded to him: [63]

77 “Q. Then when you took the tie wires off it would be a dangerous place, would it not?

A. It would.”

That defendant objected to said question and answer as calling for the opinion and conclusion of the witness, which objection was overruled, and the defendant then and there duly excepted thereto. That the Court erred in allowing said witness to answer said question and in overruling said objection.

XXXIX.

That during the examination of said witness, the following question was propounded to him.

“Q. Then you did not consider that Mr. Sheaff was competent or capable of taking care of  
78 himself in putting on the wire, did you?

A. I considered him perfectly competent to do that.”

That defendant objected to said question and answer on the ground that he was not directed to do anything of that kind, and therefore the question as to whether he thought he was competent to do that or not was incompetent, irrelevant and immaterial to any issue in the case, which objection was overruled, and the defendant then and there duly excepted thereto. That the Court erred in allowing said witness to answer said question and in overruling said objection.

XL.

79 That during the examination of the witness, the following question was propounded to him:

“Q. Would you consider it safe for you, yourself, to work upon a wire carrying seventeen thousand volts, upon a pole down by Fairview or Wonder?

A. I would consider it safe under certain conditions.”

The defendant objected to said question and answer as incompetent, irrelevant and immaterial and having nothing to do with the competency or incompetency of Mr. Sheaff, which objection [64] was overruled, and the defendant then and there

excepted thereto. That the Court erred in allowing said witness to answer said question and in overruling said objection.

80

## XLI.

That during the examination of said witness, the following question was propounded to him:

“Q. Did you in the dining room at Mrs. Adams Hotel on the morning of the 18th day of July, 1911, between the hours of six and eight o’clock, when Mrs. Adams and this young lady who was the waitress were present, say to them ‘Did Bill go?’, and upon being answered in the affirmative, did you not say to them ‘I should have gone to Fairview myself  
81 instead of sending Bill,’ and did one of them ask you why, and did you then say ‘Well, Bill is not an experienced electrician and I am afraid he is not capable of doing that work.’

A. I don’t remember any such conversation.”

Defendant objected to said question and answer as incompetent, irrelevant, immaterial, outside of the issues, no foundation laid for the question, and upon the further ground that the place, persons present, and the person who is supposed to have made the remark or joined in the conversation, was not definitely stated in the question, which objection was overruled, and the defendant then and there duly  
82 excepted thereto. That the court erred in allowing said witness to answer said question, and in overruling said objection.

## XLII.

That during the trial of said action, Charles O. Poole was produced as a witness on behalf of the de-



defendant and was asked the following question:

“Q. And do you regard that construction—I will ask you the general question: State whether or not you regard this construction as it appears here in this model, with the fence around it, built with the live wire five feet nine inches from [65] the ground, and with danger signs reading ‘Danger, high  
83 voltage, keep out’ on one of the switch posts—state whether or not you regard that as a reasonably safe construction?”

That plaintiff objected to the question on the ground it was incompetent and a question for the jury, which objection was then and there duly sustained by the Court over defendant’s objection. To the ruling of the Court the defendant then and there duly excepted, and the action of the Court is here assigned as error.

### XLIII.

During the examination of said witness, the following question was propounded to him:

84 “Q. If that was a fact would that alter your conclusion as to saying whether or not this is an ordinary and usual construction?

A. It would not make any difference in my conclusion.”

That defendant objected to said question and answer on the ground that it assumed a fact not in evidence, which objection was overruled, and the defendant then and there duly excepted thereto. That the Court erred in allowing said witness to answer said question, and in overruling said objection.

## XLIV.

That during the examination of said witness, the following question was propounded to him:

85       “Q. If it is a fact that that was cut off, that pole was cut off five feet, then there would be no reason why that five feet could not have been left on that pole and this switch been made that five feet higher, would there?

A. It need not have any bearing whatever on the height of the switch.”

That defendant objected to said question and answer as assuming a fact not in evidence, incompetent, irrelevant and immaterial, which objection was overruled, and the defendant then and there excepted thereto. That the Court erred in allowing  
86       [66]   said witness to answer said question and in overruling said objection.

## XLV.

That during the trial of said action, Mrs. V. L. Adams was produced as a witness on behalf of plaintiff, and was asked the following question:

“Q. And did Mr. Halpenny then remark ‘I should have gone to Fairview myself instead of sending Mr. Sheaff?’       A. Yes, sir.”

That defendant objected to said question and answer as incompetent, irrelevant, immaterial, and uncontradictory of the testimony of the witness Halpenny. The Court overruled said objection, and defendant duly excepted thereto. That the Court erred  
87       allowing said question to be asked and answered and in overruling said objection.

XLVI.

During the examination of said witness, the following question was propounded to her:

“Q. And did Mr. Halpenny then say ‘Well, Bill is not an experienced electrician and I am afraid he is not capable of doing that work?’ A. Yes, sir.”

That defendant objected to said question and answer as incompetent, irrelevant, immaterial, uncontradictory testimony of the witness, and on the further ground that no foundation had been laid for it, which objection was overruled, and the defendant then and there excepted thereto. That the  
88 Court erred in allowing said witness to answer said question, and in overruling said objection.

XLVII.

That during the trial, Mr. V. L. Adams was produced as a witness for the plaintiff on rebuttal, and was asked the following question: [67]

“Q. At that time and place did Mr. Halpenny say he was sorry Mr. Sheaff was hurt, and then say ‘I felt this morning I should not have sent him over there?’ A. Yes, sir.”

Defendant objected to said question and answer as incompetent, irrelevant, immaterial, uncontradictory of the witness, the witness not having any recollection upon the subject at all, and simply a  
89 matter of an expression of solicitude and regard, but no objection was urged as to whether the language was the same or not. The objection was overruled, and the defendant then and there excepted thereto. That the Court erred in allowing said witness to answer said question and in overruling said objection.



## XLVIII.

Thereafter, during the trial of said action, the following proceedings were had and taken:

“Mr. CURLER.—If your Honor please, since that matter has been settled, under that amendment  
90      ment we now ask to amend the fourth paragraph of our complaint by inserting therein an allegation that the defendant knew that the plaintiff was inexperienced in electricity, and failed and neglected to warn or caution the plaintiff at the time they sent him to work upon the arrester.

The COURT.—Is there any objection?

Mr. CANNON.—Yes, your Honor, we object to that on the ground it would be setting up an entirely new cause of action, one that we have not been brought into Court upon; one that the defendant has not been served with, and if such an amendment  
91      should be allowed at this time, it would necessitate an application for a continuance. We have not tried our case upon that theory; we have not presented our testimony upon that theory. We have presented our testimony upon the theory of the construction of the complaint, and tried our case on such theory. To [68] allow such an amendment would compel us to demur to the complaint for setting up two causes of action in one count, and setting up different causes of action—duplicity in the complaint, because it is under all the decisions, a separate and distinct cause of action, based upon separate and distinct principles of construction.

(Argument.)

92      The COURT.—I will allow the amendment.”

The action of the Court in allowing said amendment was thereupon duly excepted to, and is here assigned as error.

## XLVIX.

That during the said trial, P. R. Sheaff was produced as a witness in his own behalf in rebuttal, and was asked the following question:

“Q. Mr. Sheaff, while you were working around the substations at Fairview and Wonder with Mr. Halpenny, did Mr. Halpenny ever say to you, ‘Sheaff, remember that wire is alive’ or anything of that nature?     A. No.”

93     The defendant objected to said question and answer as not rebuttal which objection was overruled, and the defendant then and there excepted thereto. That the Court erred in allowing said witness to answer said question and in overruling said objection.

## L.

That thereafter the following proceedings were had and taken:

“Mr. CANNON.—If the Court please, I wish to make anew, and renew the motion heretofore made for a peremptory instruction to the jury, and requiring the jury to return a verdict in favor of defendant; and as the grounds of the motion, I wish to set forth and rely upon each and all of the  
94     grounds heretofore stated on the motion originally presented. I presume it will not [69] be necessary for me to repeat them at this time, but it will be understood that the motion is remade and renewed upon each and all of the grounds heretofore

stated; and I wish to make this motion, of course, as appearing at the close of the testimony, and upon the settlement of the pleadings; and do not wish to be considered as waiving the motion for a continuance, if we decide to insist upon it. I do not think  
95 it is necessary to reargue the motion, because your Honor is familiar with the evidence brought in, and whether it in any manner affects your Honor's judgment in relation to the case.

The COURT.—You wish this considered as made at the time the instructions are requested, and it will be overruled.

Mr. CANNON.—At the proper time, yes.

The COURT.—At the proper time, and it will be considered as made whenever you wish it. The ruling will be the same and you may have the same exception that was made to the previous ruling.”

Defendant now refers to the bill of excep-  
96 tions heretofore filed in this cause and prays, that for the purpose of pointing the error herein complained of, the same may be considered herein incorporated in its entirety as fully as though herein reiterated *in haec verba*.

“Mr. CANNON.—I presume it may be understood, if the Court please, that the motion referred to the other day, shall be deemed to have been made at this time.

The COURT.—It will be deemed to have been renewed and overruled, and the same exception allowed.”

The action of the Court in denying defendant's said



97 motion for a directed verdict was then and there duly excepted to, and is here assigned as error. [70]

## LI.

Prior to the argument to the jury, the defendant duly requested in writing that the Court should give to the jury the following instruction (the same being numbered 3 of the instructions requested by the defendant):

“You are instructed that the only cause of action, which the plaintiff is entitled to have submitted to you for consideration, is based upon the charge that the defendant sent the plaintiff to work at a place which was not reasonably safe in view of the unusual or extraordinary risks incident thereto, if any  
98 there was. You are, therefore, further instructed that if you find from the evidence that the place to which plaintiff was sent to work was a reasonably safe place, as that expression or term is hereinafter defined, your verdict must be in favor of the defendant, Pacific Power Company.”

The Court refused said request, but modified said instruction, to which defendant called the Court's attention, duly excepted, and now assigns as error No. 51.

That the Court erred in refusing to give said instruction to the jury.

## LII.

99 Prior to the argument to the jury, the defendant duly requested in writing that the Court should give to the jury the following instruction (the same being numbered 4A of the in-

structions requested by the defendant) :

“The complaint does not allege that the plaintiff was unfamiliar with or ignorant of the ordinary duties of an electrician’s helper, and does not allege that the plaintiff was ignorant of the ordinary risks and dangers of his employment as an electrician’s helper. You are, therefore, instructed that it must be taken as an admitted fact in this case, so far as the charges of negligence against the defendant are concerned, [71] that the plaintiff was fam-  
 101 iliar with the ordinary duties of an electrician’s helper and comprehended all of the usual and ordinary risks and dangers attending the said employment,” which request was refused, and to which defendant called the Court’s attention and duly excepted, and now assigns the same as error No. 52.

That the Court erred in refusing to give said instruction to the jury.

#### LIII.

Prior to the argument to the jury, the defendant duly requested in writing that the Court should give to the jury the following instruction (the same being numbered 4B of the instructions requested by  
 102 the defendant) :

“The complaint does not allege that the plaintiff was unacquainted with or ignorant of all of the dangers incident to the work of a journeyman lineman and electrician, but does state that the plaintiff was unacquainted with and ignorant of the dangers incident to the work of a journeyman lineman and electrician upon and near wires or appa-

ratus carrying electric current of high voltage and potential energy. You are instructed, therefore, that in so far as the charges of negligence against the defendant are concerned, it must be taken as  
103 an admitted fact in the case that the plaintiff was acquainted with and not ignorant of any of the dangers incident to the work of a journeyman lineman and electrician, excepting upon near wires or apparatus carrying electric current of high voltage and potential energy. As to all other matters relating to such duties and dangers he must be deemed, in so far as negligence against the defendant is concerned, to have had knowledge of such dangers," which request was refused, and to which ruling the defendant called the Court's attention and  
104 duly excepted and now assigns the same as error No. 53.

That the Court erred in refusing to give said instruction to the jury. [72]

#### LIV.

That prior to the argument to the jury, the defendant duly requested in writing that the Court should give to the jury the following instruction (the same being numbered 4C of the instructions requested by the defendant):

"The complaint, as amended, charges as one of the alleged defects of the lightning-arrester that it was placed or constructed too close to the substation building. You are instructed that the evidence fails to sustain this charge, and you will, therefore,  
105 ignore it in arriving at your verdict," which request was refused, and to which ruling the



defendant called the Court's attention and duly excepted, and now assigns the same as error No. 54.

That the Court erred in refusing to give said instruction to the jury.

#### LV.

Prior to the argument to the jury, the defendant duly requested in writing that the Court should give to the jury the following instruction (the same being numbered 5 of the instructions requested by the defendant):

“Certain evidence has been admitted in the case with respect to the question as to whether or  
 106 not the defendant warned the plaintiff as to the danger attending the work, upon which he was engaged at the time of the accident, if any, and whether the defendant instructed him as to how to avoid such danger. In this connection you are instructed that the complaint does not set forth any cause of action against the defendant based upon any alleged failure of the defendant to give to the plaintiff any such warning or instruction, and you cannot, therefore, find the defendant guilty of negligence on that ground,” which request was refused, and to which ruling the defendant called the  
 107 Court's attention and duly excepted, and now assigns [73] the same as error No. 55.

That the Court erred in refusing to give said instruction to the jury.

#### LVI.

Prior to the argument to the jury, the defendant duly requested in writing that the Court should give to the jury the following instruction (the same being

numbered 5B of the instructions requested by the defendant):

“Although the place to which an employee is sent to work may be actually dangerous, it may, notwithstanding, be a reasonably safe place to work within the meaning of the law relating to the duty of  
108 an employer toward his employee. Some occupations are essentially dangerous, and some places where employees are obliged to work are essentially dangerous, but it does not follow that an employer is negligent in sending an employee to work in such dangerous place. Dangerous work, such as working about electricity, is lawful and must be done. Therefore, an employer has a right to set an employee at such work or to direct him to work in a dangerous place, and an adult employee, who accepts such work, takes upon himself the risk of the ordinary dangers incident thereto. The greater the risk and  
109 danger of the particular work or the particular place, the greater is the risk which the employee assumes. It is only concealed and latent dangers, or dangers of which he does not or should not know and appreciate the risk, for which the employee does not assume the responsibility. Therefore, if an employee is sent to work in a dangerous place, but the dangers, even though great, are open, plain, and obvious, and such as are or should be known to an adult person of ordinary intelligence and capacity, such place is under the law a reasonably safe place to work, and the employer is  
110 not responsible for any injury that may be sus-

tained by the employee by reason of such dangers.”  
[74]

The Court refused to give said instruction as requested, but modified the same, and the Court's action in modifying the same and in refusing to give the following parts thereof:

“It is only concealed and latent dangers, or dangers of which he does not or should not know and appreciate the risk, for which the employee does not assume the responsibility.” “If an employee is sent  
111 to work in a dangerous place, but the dangers,  
even though great, are open, plain and obvious and such as are or should be known to an adult person of ordinary intelligence and capacity, such place is under the law a reasonably safe place to work,”—was called to the Court's attention, duly excepted to and is here assigned as error No. 56.

That the Court erred in modifying said requested instruction and in refusing to give the jury the same in its entirety.

#### LVII.

Prior to the argument to the jury, the defendant duly requested in writing that the Court should  
112 give to the jury the following instruction (the  
same being numbered 5C):

“If you find that the defendant sent the plaintiff to work in a place which was actually dangerous, but the danger thereof was open and obvious and should have been known and appreciated by him, I instruct you that the place to which he was sent was reasonably safe, and his employer cannot be held responsible for injuries suffered by him or



through or on account of such dangers”—which request was refused, and to which ruling the defendant then and there called the Court’s attention and  
113     duly excepted to and now assigns the same as error No. 57.

That the Court erred in refusing to give said instruction to the jury. [75]

LVIII.

Prior to the argument to the jury, the defendant duly requested in writing that the Court should give to the jury the following instruction (the same being numbered 15 of the instructions requested by the defendant):

“You are instructed that the danger attending the employment of the plaintiff at the time of his injury was open, latent and obvious and such as should have been known and appreciated by an adult person of ordinary intelligence, experience and capacity.  
114     This being so he assumed all the risks thereof, and your verdict must, therefore, be in favor of the defendant”—which request was refused, and to which ruling the defendant called the Court’s attention and duly excepted to, and now assigns the same as error No. 58.

That the Court erred in refusing to give said instruction to the jury.

LIX.

Prior to the argument to the jury, the defendant duly requested in writing that the Court should give to the jury the following instruction (the same being numbered 5C of the instructions requested by  
115     the defendant):

“The plaintiff does not demand in his com-

plaint any damages for estimated loss of earnings or earning power in the future. You will, therefore, in the event that you find a verdict in his favor, allow him nothing as damages for loss of earnings or earning power in the future. Not having demanded any such damages he cannot recover them in this action"—which request was refused, and to which ruling the defendant called the Court's attention and excepted to, and now assigns the same as error No. 59.

116 That the Court erred in refusing to give said instruction to the jury. [76]

LX.

That after judgment was entered in said action, and within the time allowed by law, and the orders of Court, to wit, on the 12th day of January, 1914, defendant duly made, served and filed its petition for new trial; that thereafter orders of the Court were duly made and filed extending the time for hearing the argument and for determination of said petition for new trial until the next term of said court, and thereafter continued from motion  
117 day to motion day until October 24th, 1914, at which time defendant's motion for a new trial was argued and submitted by respective counsel, whereupon the Court on said 24th day of October, denied defendant's said motion for a new trial, to which ruling the defendant then and there duly excepted, and the action of the Court in denying defendant's said petition for a new trial is hereby assigned as error.

**Assignment of Insufficiency of the Evidence.**

Defendant now specifies the following grounds of insufficiency of the evidence to support or sustain the judgment or verdict:

1. The evidence was and is insufficient to establish or sustain, and the evidence fails to  
119 establish or sustain the material allegations of the complaint, or any of them.

2. The evidence was and is insufficient to establish or sustain, and the evidence fails to establish or sustain that the lightning-arrester described in the complaint was defective in the particulars alleged in the complaint, or in any of them, or in any particular whatsoever, or defectively built or constructed or maintained, or that plaintiff was injured by or through any such defect.

3. That the evidence was and is insufficient  
120 to establish or sustain, and the evidence fails to establish or sustain the allegation that plaintiff was put to work at dangerous [77] work, or that plaintiff was inexperienced in the work at which he was placed or ignorant of the dangers thereof, or that defendant knew or ought to have known of plaintiff's ignorance or inexperience, or that plaintiff was placed at any such work without any or sufficient warning or instruction, or that plaintiff was injured by or through any of such matters or things.

4. That the evidence fails to show or establish



that plaintiff's injuries were proximately  
121 caused by or through any defect or defects in  
the lightning-arrester or in the maintenance  
or construction thereof.

5. That the evidence fails to show or establish  
that plaintiff's injuries were proximately caused by  
any act or omission of the defendant in setting plain-  
tiff at work or directing the work at which time and  
place complained of, or in failing to warn him as to  
the dangers thereof, or in failing to instruct him as to  
his duties or how to avoid the danger thereof.

6. That the evidence fails to show or establish  
that plaintiff's injuries were proximately  
122 caused by the negligence alleged in the com-  
plaint, if any.

7. That the evidence shows that the plaintiff's  
injuries were proximately caused by a separate, in-  
dependent, intervening cause, for which plaintiff was  
alone responsible.

8. That the evidence shows that the danger to  
which plaintiff was exposed was incidental to his  
employment; and that he assumed the risk of the  
same, and the responsibility therefor.

9. That the evidence shows that the danger to  
which plaintiff was exposed was an open and obvious  
one; that he is presumed to have known and appre-  
ciated the same, and that he therefore assumed the  
risk thereof.

123 10. That the evidence shows that the dan-  
ger to which plaintiff was exposed was one  
which should have been observed and avoided by a  
person of plaintiff's experience, knowledge, [78]

intelligence and capacity, and that plaintiff therefore assumed the risk thereof.

11. That the evidence shows that plaintiff was an experienced workman, and that the dangers to which he was exposed in and about the place he was set at work, were such only as were incidental to his employment, and should have been observed and avoided by him, and that he assumed the risk thereof.

124      12. That the evidence shows that the plaintiff did know and appreciate the dangers to which he was exposed, and that he therefore assumed the risk thereof.

13. That the evidence shows that the plaintiff assumed the risk of the dangers to which he was exposed in this, to wit, that upon completing his work of digging the holes in question, he voluntarily chose an unsafe, insecure and highly dangerous way to leave his place of work, and the enclosure surrounding the same, which way was known or ought to have been known to him to be dangerous, instead of

125      a perfectly safe way, of which he fully knew,

14. That the evidence fails to show whether the plaintiff's injuries were caused by plaintiff's coming into actual contact with a live wire of the defendant, or by the electricity jumping from such live wire to plaintiff's body, while his body, or any part thereof, was within one and three-quarters or one and seven-eighths inches from such wire, or while plaintiff's body was within four and one-quarter or four and one-half inches from such live

wire, or by coming into contact with or near  
126 the dead side of the lightning-arrester while  
it was carrying an overload or surge from any  
cause, or whether there was any overload or surge, or  
what was the cause of such overload or surge, if any,  
and that, therefore negligence of the defendant is not  
proved, but is merely speculative, and the casual  
connection between the negligence alleged, if any,  
and the injury, [79] is not proved, but is merely  
speculative.

15. That the evidence shows that the plaintiff's  
injuries were proximately caused by his own con-  
tributory negligence.

16. That the evidence shows that the plaintiff's  
injuries were proximately contributed to by his own  
negligence.

127 17. That the evidence shows that the plain-  
tiff's injuries were proximately caused or con-  
tributed to by his failure to exercise ordinary care  
to avoid injury to himself, by his failure to heed the  
warning of danger given by the fence around the  
lightning-arrester, and the danger signs upon the  
substation door and the switch-pole, both of which  
were, or could have been observed by him by the ex-  
ercise of ordinary care upon his part, and by his  
failure to use ordinary care to keep away from  
128 the live wires in the lightning-arrester, when  
he knew, or ought, in the exercise of reason-  
able care, to have known, by the purring of the  
transformers, and other facts and circumstances  
then known to him, that said wires were alive, and  
carrying a high voltage; and by his voluntary action



in coming into close proximity, or in contact with said live wire, when he could have departed from said enclosure by another, and perfectly safe route then known to him, and by his failure in other respects to exercise the care imposed on him by law in view of his age, experience, intelligence, capacity and powers of observation.

129        18. That the evidence shows that the accident to the plaintiff could not have been reasonably foreseen or anticipated by the defendant.

**Specifications of Particulars in Which the Verdict is  
Against Law.**

1. That the verdict is against law in each and every and all of the particulars in which it has been above specified that the evidence is insufficient to justify the verdict.

2. That the verdict is against law, inasmuch as there is no evidence of any negligence on the part of the defendant [80] contributed as a proximate cause to the accident and injury complained of by the plaintiff.

130        WHEREFORE, the said defendant, Pacific Power Company, a corporation, prays that the judgment of the District Court of the United States in and for the District of Nevada, entered herein in favor of the plaintiff and against the defendant, be reversed and that the said District Court of the United States in and for the District of Nevada be

directed to grant a new trial of said cause.

WILLIAM M. ABBOTT,  
WILLIAM M. CANNON,  
METSON, DREW & MacKENZIE,  
GEORGE A. BARTLETT,

Attorneys for Defendant.

[Endorsed]: No. 1571. In the District  
131 Court of the United States in and for the Dis-  
trict of Nevada. P. R. Sheaff, Plaintiff, vs.  
Pacific Power Company, a Corporation, Defendant.  
Assignment of Errors. Filed March 4th, 1915. T.  
J. Edwards, Clerk. Wm. M. Abbott, Wm. M. Can-  
non, George A. Bartlett, Attorneys for Defendant.  
[81]

---

*In the District Court of the United States, in and  
for the District of Nevada.*

No. 1571.

P. R. SHEAFF,

Plaintiff,

vs.

PACIFIC POWER COMPANY, a Corporation,  
Defendant.

**Order Allowing Writ of Error and Fixing Amount of  
Supersedeas Bond.**

Upon the motion of George A. Bartlett, William  
M. Abbott and William M. Cannon, attorneys  
132 for defendant herein, made this 4th day of  
March, 1915, and upon the filing of said de-  
fendant's petition for the allowance of a writ of

error intended to be urged by defendant, and upon the filing of the assignments of error by defendant:

It is ORDERED, and the Court hereby ORDERS, that a writ of error be allowed, and that the amount of the supersedeas bond to be given by the defendant and upon said writ of error be, and the same is

hereby fixed at the sum of Eighteen Thousand  
133 Five Hundred Dollars (\$18,500.00), and upon the giving of said bond all further proceedings in this court be suspended, stayed and superseded pending the determination of said writ of error by the United States Circuit Court of Appeal, in and for the Ninth Circuit.

Dated this 4th day of March, 1915.

E. S. FARRINGTON,

Judge. [82]

[Endorsed]: No. 1571. In the District Court of the United States in and for the District of Nevada. P. R. Sheaff, Plaintiff, vs. Pacific Power Company, a Corporation, Defendant. Order Allowing Writ of

Error and Fixing Amount of Supersedeas  
134 Bond. Filed March 4th, 1915. T. J. Edwards, Clerk. Wm. M. Abbott, Wm. M. Cannon, George A. Bartlett, Attorneys for Defendant.

[83]



*In the District Court of the United States for the  
District of Nevada.*

No. 1571.

P. R. SHEAFF,

Plaintiff,

vs.

PACIFIC POWER COMPANY, a Corporation,  
Defendant.

**Supersedeas Bond on Writ of Error.**

KNOW ALL MEN BY THESE PRESENTS: That we, Pacific Power Company, a private corporation, defendant above named, as principal, and American Surety Company, a corporation created, organized and existing under and by virtue of the laws  
135 of the State of New York, as Surety, are held and firmly bound unto P. R. Sheaff, plaintiff above named, in the sum of Eighteen Thousand Five Hundred (\$18,500) Dollars, to be paid to said P. R. Sheaff, his executors or administrators, to which payment well and truly to be made, we bind ourselves, and each of us, jointly and severally, and ours and each of our successors, representatives and assigns, firmly by these presents.

Sealed with our seals and dated this fourth day of March, 1915.

WHEREAS, the above-named defendant,  
136 Pacific Power Company, a private corporation, has sued out a writ of error to the United States Circuit Court of Appeals, in and for the Ninth Circuit, to reverse the judgment entered in the

above-entitled cause by the District Court of the United States, in and for the District of Nevada, in favor of the above-named plaintiff [84] and against the defendant therein for the sum of Fifteen Thousand Dollars (\$15,000.00) interest and costs,

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH that if the above-named Pacific Power Company, a private corporation, shall prosecute said writ of error to effect and answer all costs and damages, if it shall fail to make good its plea, then this obligation shall be void, otherwise to be and remain in full force and effect.

IN WITNESS WHEREOF, the said Pacific Power Company, a private corporation, and the American Surety Company, a corporation created, organized and existing under and by virtue of the laws of the State of New York, have caused these presents to be executed this fourth day of March, 1915.

PACIFIC POWER COMPANY,

By GEORGE A. BARTLETT,

Its Attorney-in-Fact.

AMERICAN SURETY COMPANY,

By GEORGE S. HALL,

Resident Vice-President.

[Notarial Seal] Attest: ALBERT D. AYRES,

Resident Assistant Secretary.

[Surety Company Seal] [85]

State of Nevada,

County of Washoe,—ss.

On this 4th day of March, A. D. one thousand nine

hundred and fifteen, personally appeared before me, Frank J. Byington, a Notary Public in and for said Washoe County, Albert D. Ayres, known to me to be the resident assistant secretary of the corporation that executed the foregoing instrument, and upon oath, did depose that he is the officer of said corporation as above designated; that he is acquainted  
139 with the seal of said corporation and that the seal affixed to said instrument is the corporate seal of said corporation; that the signatures to said instrument were made by officers of said corporation as indicated after said signatures; and that the said corporation executed the said instrument freely and voluntarily and for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at my office in the County of Washoe, the day and year in this certificate first above written.

[Seal] FRANK J. BYINGTON,  
Notary Public in and for the County of Washoe,  
State of Nevada.

140 My commission expires June 5th, 1916. [86]  
State of Nevada,  
County of Ormsby,—ss.

On this fourth day of March, A. D. 1915, personally appeared before me, the undersigned, a Notary Public in and for the County of Washoe, State of Nevada, acting in Ormsby County, said State, Geo. A. Bartlett, known to me to be the person whose name is subscribed to the within instrument as the attorney in fact of Pacific Power Company, and he



duly acknowledged to me that he subscribed  
141 the name of the said Pacific Power Company  
thereto as principal, and his own name as at-  
torney in fact, freely and voluntarily, and for the  
uses and purposes therein mentioned.

[Seal]

JONATHAN PAYNE,

Notary Public.

The foregoing undertaking is hereby approved  
March 6, 1915.

E. S. FARRINGTON,

U. S. Dist. Judge.

[Endorsed]: No. 1571. In the District Court of  
the United States for the District of Nevada. P. R.  
Sheaff, Plaintiff, vs. Pacific Power Company, a Cor-  
poration, Defendant. Supersedeas Bond on Writ  
of Error. Filed March 6th, 1915. T. J. Edwards,  
Clerk. Wm. M. Abbott, Wm. M. Cannon, Geo. A.  
Bartlett, Metson, Drew & MacKenzie, of Attorneys  
for Defendant.

14205

8645

---

22850 [87]

---

*In the District Court of the United States, in and for  
the District of Nevada.*

No. 1571.

P. R. SHEAFF,

Plaintiff,

vs.

PACIFIC POWER COMPANY, a Corporation,  
Defendant.

**Bill of Exceptions.**

BE IT REMEMBERED, that the above-entitled cause came on regularly for trial in the above-entitled court on Wednesday, the tenth day of December, A. D. 1913, at ten o'clock A. M. of said day, before Honorable E. S. Farrington, Judge of said court, sitting with a jury, Messrs. Curler and Gedney appearing as attorneys for plaintiff, and Mr. William M. Cannon and George A. Bartlett appearing as attorneys for defendant; whereupon the following proceedings, and none other were had and taken:

The complaint and answer in the case were read to the jury by Mr. Curler and Mr. Cannon, respectively. The opening statement on behalf of plaintiff was thereupon made by Mr. Curler; defendant, through its counsel, reserving the right to make its opening statement at a later stage of the trial.

**[Testimony of P. R. Sheaff, the Plaintiff, in His Own Behalf.]**

Mr. P. R. SHEAFF, the plaintiff, called as a witness in his own behalf, being first duly sworn, testified as follows: [88]

Direct Examination by Mr. GEDNEY.

2 My name is Percy Richard Sheaff. I am the plaintiff in this case. I will be twenty-nine the first of next month. I was born in England. I first came to this country in 1902. I was only here about one day. The next time I came back was in 1904. I have not been in the United States per-

(Testimony of P. R. Sheaff.)

manently since that time. The last time I came to this country was in 1907. I have been in Canada, Alaska, New Zealand, Australia, and I have  
3 touched at the South Sea Islands. I am a steam stationary engineer. I received my education in England. I graduated from the grammar school and I was about four months in high school. I left school at the age of twelve years and four months. I received practically all my education in England. At that time I never received any instruction in electricity.

(By Mr. GEDNEY.)

“Q. Have you ever worked around electrical appliances? A. I have.  
4

Q. Where was the first time?

A. The first time was in Miller's, Nevada.

Q. What did you do there, Mr. Sheaff?

A. I worked in a power plant there.

Q. And what were your duties?

A. My duties—at one time I was foreman there, or at first, rather, I was oiler, and my duties were to keep the engines clean, and to oil the bearings of the engines.

Q. Of what kind of engines?

A. They were cross-compound Corliss, reciprocating engines.

Mr. CANNON.—(Q.) What was that?

A. Cross-compound Corliss engines? [89]

5 Mr. GEDNEY.—(Q.) Electric or steam engines?



(Testimony of P. R. Sheaff.)

A. They were steam engines, they were driven by steam.

Q. Driven by steam?      A. Yes.

Q. What did you have to do with those engines?

A. I had to keep them clean, and oil the bearings.

Q. Were there any electrical appliances or any machinery there at Millers?      A. Yes.

Q. What were they, do you know?

A. There were generators in the power-house; there were several electrical motors running different pumps, and there were some switchboards.

Q. Did you have any duties to perform in  
6      connection with that machinery at that time?

A. Yes.

Q. What was it?

A. Sometimes I would have to start the pump.

Q. How did you start that pump?

A. By throwing the starting switch.

Q. Simply a lever?      A. Just a lever.

Mr. CANNON.—That is objected to as leading and suggestive.

Mr. GEDNEY.—I accept the objection. (Q.)  
How long were you there?

A. The first time? I have been there different times.

Q. You have been there different times?

A. Yes.

Q. Well, how long did you work there, altogether?

A. I could not tell offhand; I could figure it up.

I should say—let's see—somewhere about  
7      twenty-four months, I should judge.

(Testimony of P. R. Sheaff.)

Q. Twenty-four months. Now, about when was that, in what year?

A. I worked there about seven months in 1906, and then in 1907 I worked about from some time in April until about [90] the latter part of May, that would be about six weeks; and then I went back in 1908—and let me see how long I worked that time;

I think about, I think I worked about the  
8 — greater part of 1908 in Miller's—no, I didn't  
either; I worked about five months, I think.

I left there in the middle of the summer of 1908.

Q. Now, during any time that you worked at Miller's, did you have any further duties in connection with any electrical apparatus to perform?

A. No, sir; not that I remember.

Q. After you left Miller's, did you at any time work with any electrical machinery or appliances?

A. Yes, I did.

Q. Where was that?

A. At Lake Sabrina on Bishop Creek, in California.

Q. What were your duties there?

9 A. Well, all I did there with electrical equipment was to throw a switch a few times.

Q. And what were your duties there?

A. Principally running a stationary engine, a donkey-engine to the swinging-boom brake.

Q. What kind of an engine, steam or gasoline?

A. A steam engine.

Q. How long did you work there?

(Testimony of P. R. Sheaff.)

A. Why, the first time, about three months, I think.

Q. And how many times did you work there?

A. Twice.

Q. How long did you work there the second time?

A. About the same length of time."

WITNESS.—(Continuing.) After that, I later worked around electrical machinery at Fair-  
10 view, Nevada, and Wonder, Nevada. At that time I was employed by the Pacific Power Company. [91] I was first employed by the Pacific Power Company along about the tenth of April, 1911, by Mr. George Johnson, in Hawthorne, Nevada. He hired me in Hawthorne to go with him to Fairview and dig holes and to help in general with this line they were going to build from the main line into Fairview, just a spur line. The main power line runs from Lundy, California, to Wonder,  
11 Nevada. The power plant of that line is on Mill Creek in California. The power is conveyed from there to Fairview over their wires. It is a line of wires. There are three wires. I helped with the construction of that line. I dug holes and help set poles, and worked around the reel wagon when they were constructing the line. My duties simply consisted of digging holes in the dirt and rock. The reel wagon carries five reels—three reels for the electric line and two for the telephone line, and those two lines are about thirty feet apart. This



(Testimony of P. R. Sheaff.)

wagon is drawn by horses, and they keep the  
12 wagon along as close to the electric line as they  
can; that is, to where the electric pole is set  
in the ground, so that the three heavy copper wires  
lay close to the power line and the two telephone  
wires coming off the wagon have to be carried over  
this thirty feet to parallel the telephone lines; and  
my duties consisted of taking a piece of wire—just  
take a piece of wire and bend it around and make a  
hand hole, do one for each hand and slip it  
13 through these two telephone wires, and I  
would be in parallel—I would be close over by  
the telephone line and I would stretch and pull these  
telephone wires over to the telephone poles as they  
played off the reel-wagon. Those power wires  
were approximately between three-sixteenths and a  
quarter of an inch in diameter; the telephone wires  
about one-eighth of an inch in size, or possibly a little  
less. The electric wires, I think, were made of cop-  
per, and the telephone wire was made of galvanized  
iron. That was the construction of the main  
14 line. I worked on the construction of the  
main line about [92] two weeks. All the  
time I was constructing this main line, I was work-  
ing for the contractor. I first entered the employ  
of the Pacific Power Company about the tenth of  
April, 1911. My duties were to do whatever George  
Johnson told me to do. We worked in Hawthorne  
a day or so gathering together some insulators and,

(Testimony of P. R. Sheaff.)

I think, possibly a few other things from a warehouse in Hawthorne, and labeling them, painting a sign on them so they could be shipped over the railroad, and we worked at that about a day.

15 Then we went from Fallon to Fairview the next day and started in to dig holes for these poles, and I think I dug holes somewhere around two or three weeks, and after that we set the poles in these holes, and after that, I helped string wires on these poles—those from the main line up to the substation in Fairview. Up to that time, I had never in my life strung any wires on any poles.

(By consent of counsel, an order was thereupon entered excluding all witnesses from the courtroom, except the plaintiff, an officer of the defendant, and the expert witnesses.)

When I went to work for Mr. Johnson I was employed to do labor work. These poles were dug between the main power line and the substation at Fairview. In stringing the wire I climbed the poles and pulled the wire up on top of the insulators and tied it on. Up to that time, I had never done that work for any person, or at any time before that time. When we started to string the wire was the first time I ever climbed an electrical pole. I climbed those poles with climbing irons—the irons that the lineman wears and straps around his leg. They have a spur on them. After I finished that work, I went to work up at the substation at Fair-

(Testimony of P. R. Sheaff.)

view. I was helping Mr. Halpenny, my boss. He was [93] installing the transformers and fixing up that substation. Most of the work was shifting these transformers and getting them into place. We had to put them on rollers and take bars, pinch bars, and shift them around to get them in the right place.

I worked about a month at that substation  
18 under Mr. Halpenny, from whom I received my orders. After I had finished this work at the substation I went to Wonder. At Wonder we did pretty near the same thing as we did at Fairview. I was still working for this company. I worked at Wonder altogether about six weeks. The first part of the time I helped Mr. Halpenny and then he told me to go ahead and build the line from the substation in Wonder to the main line, and I put up that line, and then I put a line in the mill. In the course of  
19 the construction of that line, I did not make any of the connections. After I finished that new line Mr. Halpenny and myself built a lightning-arrester. In connection with that lightning-arrester I dug the holes for the poles and assisted him in putting them up. That lightning-arrester was constructed as follows: there were four poles put in the ground at right angles to each other, that is, about like those four legs of that table, and those poles must have been about—oh, I suppose sixteen or twenty feet long; and then  
20 there was a framework built on those poles



(Testimony of P. R. Sheaff.)

seven or eight feet from the ground, and then the lightning-arrester was put on top of that framework. This lightning-arrester to a person who had never seen one before looked like a spider lying on its back with its legs in the air. It was made out of lumber and poles and insulators and pipe. I don't know whether that lightning-arrester was in any way connected with the main line or the feed wires. I didn't make any connections around that lightning-arrester.

After I had finished helping Mr. Halpenny on  
21 that lightning-arrester, [94] I went to Fairview to do a job on the lightning-arrester there. At that time, there was a lightning-arrester at Fairview which had been constructed about the middle of June. I was there at the time it was constructed. I did not work on the arrester itself. I worked in connection with the building of that lightning-arrester. I helped to dig holes, and I helped to bore some holes in some timbers that were used in its construction. The men who were there were Mr.

Halpenny, Mr. Greenleaf, Mr. Herring and  
22 Mr. Campbell and an old Swede carpenter. I am not sure who was in charge of that work; that is who was directing the building of that lightning-arrester. I was not right there at the time it was being built. I was cleaning up the substation and outside of the substation. This lightning-arrester was on the rear side, outside the building of the substation. It wasn't far from it. The substation was

(Testimony of P. R. Sheaff.)

constructed of lumber and covered with corrugated iron. When I was sent over there I was told to get some clamps made and to dig some holes and put some concrete blocks into them. These con-

23      crete blocks were made of sand and cement.

I made them in Wonder and they were about eight inches square and about two feet long. I was told where to dig the holes by Mr. Halpenny. He said, dig the holes under the lightning-arrester, right plumb under the arms nearest the switch. There were six arms of the lightning-arrester. I received that instruction in Wonder. On the morning of the 18th of July, 1911, I went from Wonder to Fairview.

I left Wonder about half-past four in the  
24      morning and arrived at Fairview about seven o'clock. After I got to Fairview I had breakfast, then I went up to the mill—the Nevada Hills mill—a stamp-mill. After I got to the mill I went and saw Mr. Fleming and went to the blacksmith-shop, [95] and he gave the blacksmith instructions to make these clamps that I had drawings for. Then I saw Mr. Perrin and I got the key to the substation and went down to the substation. These clamps were to be fitted around these cement blocks.

After I got to the substation, I got a pick and  
25      shovel and went out to the lightning-arrester and dug these holes.

(Mr. Curler thereupon drew a rough diagram on the blackboard for purposes of illustration.)

(Testimony of P. R. Sheaff.)

WITNESS.—(Continuing.) The substation was located on the crown of the hill about one hundred and fifty feet from the Nevada Hills Company. The ground where the substation was built had been levelled. They drilled some holes in the rock and blasted it and levelled it off. The refuse and earth that was taken from this spot that was leveled was

26      thrown to one side. This ground was level for a few feet from the building, and then sloped off down the hill. Where it sloped off, of course

it was rough, but the first three feet from the building it was comparatively smooth, although it was composed of rocks. Looking towards the building, with the lightning-arrester between the building and myself, I dug the first hole to the right-hand side, I dug the second hole in the middle and the third hole to the left. These holes were situated directly under the end of the arm of the lightning-arrester—ex-

27      actly. To get the location of the spot to put those holes directly under the end of the arm,

I had a plumb line—a piece of twine with a little rock fastened to the end of it. I wound one end of that around the rod, so that the rock hung down perpendicularly. I wound it around the end of the arm which was made of pipe. That was a part of the lightning-arrester. In digging those holes, I [96] used a pick and shovel. The formation was made ground. The rock and earth that I dug out of these holes I threw to one side—



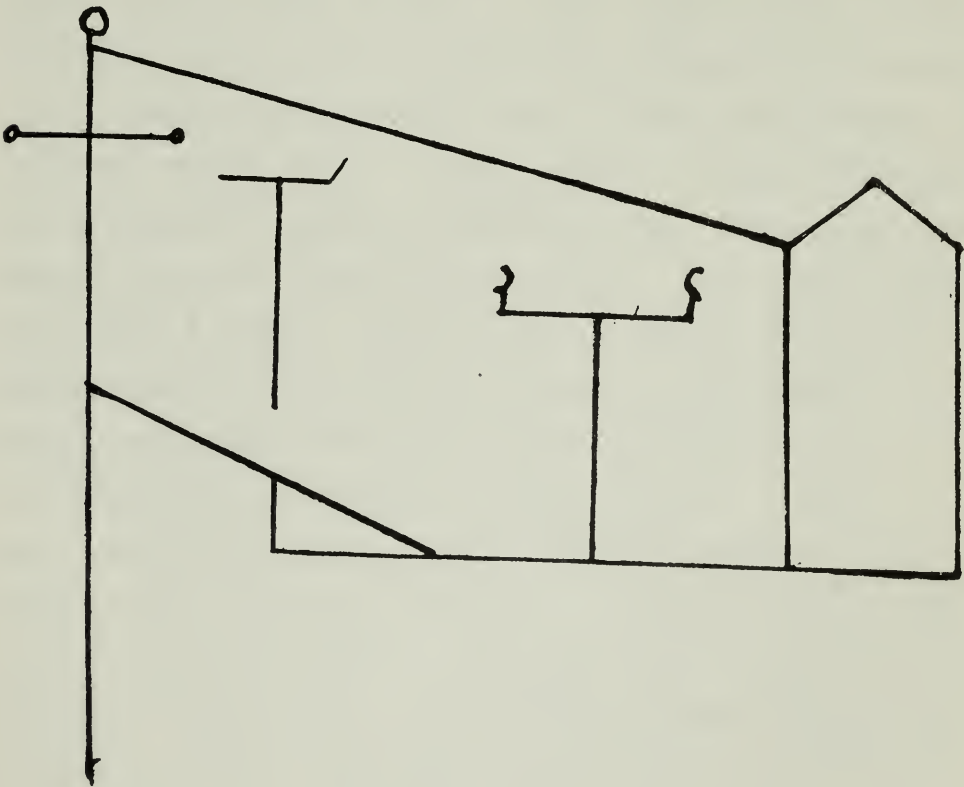
(Testimony of P. R. Sheaff.)

28      towards the down-hill side. Those holes were about a foot and a half deep and I should judge, about fifteen inches in diameter across the top. There was a guy wire in the immediate vicinity of those holes running from the last post into the ground. That guy wire came down across the middle hole, or close to the middle hole. It passed over the middle hole at a height of about two feet. I recognize this drawing upon the board.

Mr. GEDNEY.—(Q.) Mr. Sheaff, will you explain that drawing, if you understand it?

(The following is a facsimile of the drawing referred to:)

[Facsimile of Drawing upon the Board (1).]



(Testimony of P. R. Sheaff.)

29 A. Yes. This is the last pole, and this is  
one timber of the switch, and this is a light-  
ning-arrester, and this is the substation. This  
is one of the wires running from the last [97] pole  
into the substation, with the gable; this gable of the  
substation was around this way, the gable end is look-  
ing that way; and this is the guy wire running from  
this pole down to the anchor here.

WITNESS.—(Continuing.) It was not attached  
to that post, the end of it was in the ground between  
these two posts; there were two posts here  
30 you see; this pole was not so far away. This  
(indicating on diagram) was the lightning-  
arrester there. I dug those three holes right along  
under these arms here. There were three arms  
there and I dug the three holes under each arm, that  
is, underneath each one. There were three arms,  
the same as are shown here. This shows just as  
you would see the lightning-arrester looking at it  
from either end. There were three sets, the same  
as is shown here on the board. After I had dug  
these holes I started for the side of the build-  
31 ing and that was all I remember for some  
time. I was going to the side of the building  
to get a cement block. They were around on one  
side of the building. I started around to the right  
from where I dug the holes. With regard to this  
lightning-arrester that brought me around towards  
the building—closer to the building. I don't exactly  
know what happened to me next. The next thing I  
remember, I was lying on my stomach alongside of

(Testimony of P. R. Sheaff.)

the substation. My head was further from the lightning-arrester than my feet. Before that

32 time I presume I had lost consciousness. The next thing I knew I was lying on the ground.

At the time I started, I had started to walk around toward the building. I did not feel any sensation or any stroke or anything of that nature. When I found myself lying on the ground with my head away from the lightning-arrester I was weak. I do not know if I can describe my condition. I crawled around the building past the [98] lightning-arrester and came back this way. In passing there,

I went between the lightning-arrester and the  
33 building. I crawled because I could not walk.

I crawled right around the substation to the inside, over in the corner where the telephone was hanging. I was partially conscious part of the time. My purpose was to get to the telephone. I did not get to the telephone. I could not stand up to it. It was hanging up about five feet from the ground. I pulled myself up to the window and I shouted. There was no one else there at that building or around that building at the time this happened. There was no one in the immediate vicinity of that house. It was about

34 two hundred feet to where any one was. I got to the window and shouted and Mr. Herring first came to my assistance and then several others. They fixed me up as best they could—bandaged me—and then they put me into an automobile and took me to Fallon. At that time, I don't think



(Testimony of P. R. Sheaff.)

I fully realized what my injuries were. I fully realized what my injuries were about three or four days after that. My back and shoulders and my feet and ankles were burned. The top part of my  
35 back and about half way down. The top of the left foot was burned and the whole of the right foot. During the trip from Fairview to Fallon, I was conscious at intervals. I was in pain. I can't describe that pain. It was all over me. During the time that I was conscious the pain was severe. After I got to Fallon they took me to Doctor Gardner. He attended to me. I am under his care yet. I was under his immediate care there about six months. I was in bed about three months.

I could not see my back; I don't know as that  
36 was swollen, but my right leg all the way from the foot up into the thigh was swollen part of that time. It [99] was swelled up larger than normal. It was very painful during the time it was swollen. The color of that limb during the time it was swollen was red. During that three months that I was in bed I suffered. There was intense pain in my limbs, and feet and back and shoulders and arms—I can't explain it in words. I don't think I did rest in bed during that time, no matter  
37 which position I laid down in, I was laying on some of my burns. I could get the most relief lying on my stomach. I would lie full length on my stomach with one or two pillows under my stomach on a flat bed and no pillows under my head. During these three months I did not sleep regularly, but I

(Testimony of P. R. Sheaff.)

did sleep some. The doctor administered some opiates to me during that time. That relieved me from pain somewhat; it did not relieve the pain, but induced me to sleep. I could not notice any let up in the pain. At the expiration of those three  
38 months I would get up for a little while every day and they would put me in a wheel-chair, and then they would prop up other chairs for my feet, and I would kind of lay down in this wheel-chair in the window. I continued to do that, I suppose, for about a month. Mr. Justice was taking care of me during those four months. Mr. Justice was a nurse. I used the wheel-chair for quite a while after the expiration of this month. I then still  
39 remained in Fallon. Since that time, I have been able to navigate around with my crutches and a wheel-chair. At this time I am using crutches. I have never been able to walk since that time without using crutches. I was injured on the 18th day of July, 1911. I cannot now get around without crutches on account of my feet being sore. Since that time I have done no labor. I have worked in no way that has brought me in money. Since that time my friends have supported me. This mechanical contrivance here to which you call my at-  
40 tention is a model of a [100] lightning-arrester at Fairview. This model, to the best of my knowledge, fairly represents in its construction that lightning-arrester. The building would be on the lower side of that—in here—(indicating on model). The main wires, or feed wires, would come

(Testimony of P. R. Sheaff.)

past that and then into the building. They would come from the high side. The post I spoke of which had a guy wire on it would be out in here—out away from the high side. This post was on the high  
41 side—about fifteen feet to the best of my recollection, from the first part of this lightning-arrester. The building with regard to the posts of this model on this low side would be just in here. There would be no posts similar to these two on that lightning-arrester on the low side. The main wires going across were connected to insulators on a bracket projecting from the side of the building. On the ground there were not these posts which are shown on the low side. These three in-  
42 sulators here were out on an arm built on a bracket projecting from the building, and the building would be on this side from the inside point of these three wires on the low side of this lightning-arrester to the building would be about three feet. That guy wire would come into this model from this pole down in underneath this structure here. Just about like your pencil at that point, possibly a little bit lower than you had it there. It is on a little sharper angle there, something like that. I dug the first hole underneath this wire here, right down in here. (Witness indicates with pointer.) That would be underneath the right hand looking toward the building,—the right-hand  
43 point or back point of the lightning-arrester looking toward the building. To go to that



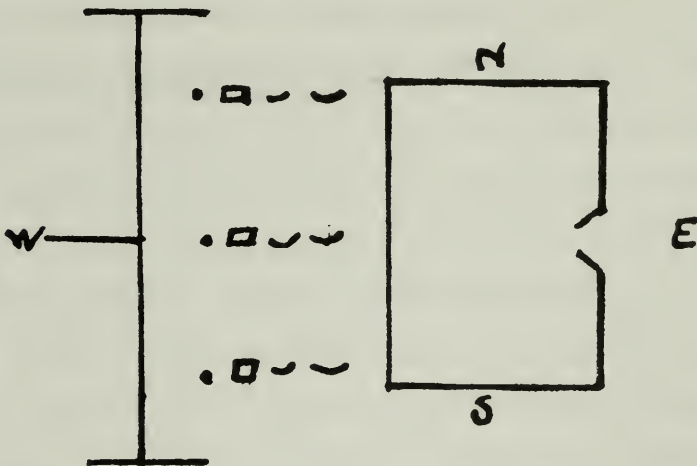
(Testimony of P. R. Sheaff.)

point I came around the building here; suppose this is the building, here is one wall and here is the other here; I came around the bulding right around this side, and around here over to this point over here. The door would be on the east sire [101] and the sides of the substation would be north and south.

44 According to my recollection this side of it would be the east side of the lightning-arrester and the west side of the building. In this drawing that you (Mr. Gedney) have made on the board, these circular marks represent the lightning-arrester, the door of that building would be around on this side.

(The following is a facsimile of the drawing made on the board by Mr. Gedney and referred to by the witness.)

**[Facsimile of Drawing Made on the Board (2).]**



It would take up more space than that, it was a big wide door—two swinging doors. They open inward. Looking out of those doors the direction would be about east. The upper part would be north

(Testimony of P. R. Sheaff.)

and the lower part south, and the back part  
45 west. When I went from the building around  
to the lightning-arrester, I went right around  
this southeast corner, and then around to the south-  
west corner over to that point, that lower left-hand  
point there, about in that position (indicating).  
After I dug that hole I dug the next one. With  
regard to that guy wire the next hole was about  
underneath the guy wire or close to it, if it was not  
directly underneath. I dug the next hole on the last  
one. In digging these holes I threw the dirt  
46 down to one side—toward the west out here.

To the best of my recollection, those chalk  
marks represent the pile of dirt as I threw it out.  
This would represent one hole. [102] (Witness  
refers to model.) It would be the last hole. This  
direction (indicating) for the purpose of illustrating  
would be north, east would be over to this side, the  
right side, and the south on this side (indicating.)  
The west would be to the left. I dug the first hole  
right under this here (witness indicates with pointer  
and Mr. Cannon marks point with the letter  
47 “A” on model with chalk). This letter “A”  
would represent the first hole. The second  
hole was dug under this middle arm. (Mr. Cannon  
marks point on model with letter “B.”) This point  
marked “B” would fairly represent it. The third  
hole would be here (witness indicates position on the  
model and Mr. Cannon makes chalk mark on model  
and designates the point “C”). This chalk mark

(Testimony of P. R. Sheaff.)

designated "C" would represent that. The pile of dirt that I took out of hole "A" was down along here some place (indicating), it was an irregular pile. That chalk mark would fairly represent  
48 it. It was in the same position for the dirt as hole "B" with regard to hole "B." That would represent the dirt and at "C" in the same position with regard to the hole. The chalk marks upon this model fairly represent the holes and piles of dirt. The solid marks made on this model represent the piles of dirt and the square marks represent the holes. After I dug the last hole, I started from here (indicating)—from hole "C" toward the building. I was then going east. In digging that  
hole I was using a shovel. I threw the shovel  
49 to one side—down in here some place, or right along side of the hole. I got through, and just tossed it to one side, alongside of hole "C." The last I remember I was going toward the building. The last point at which I remember I was about in here (indicating on model about the point marked "D"). The next thing I knew I was lying on my stomach alongside the building—this wall would be along here (indicating on model) near the  
low side of the building about where you  
50 have drawn [103] that line near the low side of this model. My head was towards the north. If that is drawn to scale, my head would be about here (indicates on model at the point marked "E"). My feet were toward the south. They were



(Testimony of P. R. Sheaff.)

about here (indicating the point marked "F"). As I recollect, I was lying at full length. When I came to, I crawled around here to this corner of the building, and then around this side—that is, I crawled to the south along the general direction marked to this

dotted line. I went around to the side and  
51 into the building. In going from hole "C" to

the point "E," the ground was a little rocky, the first few feet, and then this in here, along here over to point "E" was comparatively smooth and level. About a third, or a half of that distance was rocky. The ground alongside of the west side of the building was levelled off and smoothed up as best it could be. From hole "C" going around the lightning-arrester, the other way, it was rocky and the ground slopes down this way, about like rock will

lay after it has been thrown out, I suppose,  
52 with a shovel. From point "C" there was a

fence which would obstruct your going west around on the outside of the lightning-arrester. There was a fence down in here (pointing). It was a wire fence and it went from some point over here on the northwest corner of the building to a point down in here somewhere. It went to a switchboard standing out here. The switch appears upon the model, here (indicating). The switch would be located at the highest point on the west side of this

model, as we have it marked. This wire went  
53 from the northwest corner of the building over to a post that supported the switch. It

(Testimony of P. R. Sheaff.)

then went, to the best of my recollection, to the other post of the switch, along this side. The posts of the switch acted as posts for this fence. From the southwest [104] corner of this model, that wire went over to the southwest corner of the building. To the best of my recollection, that fence was constructed of telephone wire, either two or three wires. When I first went there, before I dug that hole "A,"

to get in through that fence, I took the staples  
54 out of this southeast corner of the fence.

When I went from point "C," as shown on this model, I was going around here, and I got this far. I went from point "C" to point "D." I intended going through the fence to get to this south side of the building. I could go along the east side of the lightning-arrester, or the west side of the lightning-arrester. If I went along the east side of the lightning-arrester, I would go between the lightning-arrester and the wall of the building,

55 and if I went along the west side of the lightning-arrester, I would go between the lightning-arrester and the switch. In going along that way, west of the lightning-arrester and between the lightning-arrester and the switch, the ground was rough and rocky, and uneven, and sloping at an angle. The guy wire would impede a person from going that way. It was coming down over the hole marked "E," like that (illustrating). If a person had gone that way, the wire at the point where you would

(Testimony of P. R. Sheaff.)

cross would vary as to height. If you passed  
56 under here, why it might be four or five feet,  
and if you stepped over it, it might only be two  
feet. If you went under the wire at the closest  
point you could go to the switch; the height of the  
wire would have been about five feet. If you went  
past the wire at the closest point to the lightning-  
arrester, the height of the wire would be about a foot  
and a half or two feet. There was nothing else be-  
side the lightning-arrester there to impede in any  
way from going around that wire away from  
57 hole "C" to the corner of the building on the  
[105] south side. On the south side there  
would be nothing to obstruct a person going over  
that. Those piles of dirt, with reference to where  
a person would go in going along between the light-  
ning-arrester and the switch were about where they  
are marked here. Those piles of dirt were about  
eight or ten inches or a foot high. They consisted of  
rock and a little dirt. I wound the twine around the  
ends of these three arms of the lightning-arrester—  
this one, and this one, and this one, in order  
58 to get the location of those holes. That would  
be on the west side and next to the switch and  
directly above the points marked "A," "B" and  
"C." I was at Fairview when this lightning-  
arrester was constructed by Mr. Halpenny and some  
others. I don't know whether that lightning-  
arrester was finished at that time. There were no



(Testimony of P. R. Sheaff.)

blocks there at that time. At the time Mr. Halpenny and others constructed this lightning-arrester, I don't know whether they connected the wires to the lightning-arrester. When I went over on the  
59 day that I did go to Wonder and Fairview, I did not know whether or not the feed wires had been connected with this lightning-arrester. On the model these represent the main wires on the electric line running into the substation. The three top wires on this model are connected to the lightning-arrester here on these three points where it went into the building. At the time I went out to Fairview to dig those holes, I don't know whether those wires were connected. Mr. Halpenny did not say anything to me as to whether or not they were  
60 connected. I didn't know that they were not connected. At that time I didn't know whether or not there was any danger connected with this lightning-arrester, if those wires were connected. I had not been informed by any one that there was any danger in working around this lightning-arrester. I had never worked on any live wires up to that time. I never [106] worked in my life on any live wires. At that time I did not know enough about electricity to know whether or not there was any danger in working around this lightning-arrester if those three wires were  
61 connected with the arms as shown upon this model. I think I do know now. Mr. Halpenny did not tell me to wrap that twine around the

(Testimony of P. R. Sheaff.)

end of that lightning-arrester in order to get the location of the hole.

Mr. GEDNEY.—Q. At this time, if the Court please, we ask permission to exhibit the back and feet of the plaintiff to the jury. Will you please remove your coat and shirt, Mr. Sheaff? (The witness removes his clothing as requested.)

WITNESS.—Before I received this injury I did not have any scars on my back. There were  
62 no scars on my left arm and shoulder which now appear there. There were no scars on the right shoulder before this accident. The extent of the burn on the left shoulder, as far as I know, came down here as far over as I could see. I could not see over there very far. It was about like the left shoulder, as far as I could see. The highest burns on me were on the top of my right shoulder. There were burns right here on top of the left shoulder  
(indicating). I was burned on the body be-  
63 tween the back, which I have exhibited to the jury and my feet right here. I was burned on this left foot. This top of the left foot was burned and the toes and the right foot was burned on this side, on the outside and on the inside and on the bottom. The two toes which are missing on the left foot were taken off after this injury. At this time, my left foot pains a little. I use it to walk upon. If I walk to any extent it gets very painful and tired.

(Testimony of P. R. Sheaff.)

64 It pains me in the left hip, right in here (indicating) about the top of the left hip, here is the top of the bone, here, and it is right in here that it is painful. There is a slight pain there all the time [107] and walking increases it. I have not used my right foot since this injury. (Witness stands up and places foot upon the ground.) I can't put my heel to the floor standing up. I can put it down to there, and that is as far as I can get  
65 it by putting my weight on it. The heel is about three inches from the floor. When I bear my weight upon it it is painful. Since I left Fallon, I have massaged and exercised that foot. I massaged it by simply rubbing it, rubbing oil and vaseline on it. I exercised it by practicing putting it on the floor, and then I take it in my hands and work it the best I can. (Witness sits upon the table and shows the jury how he works it.) I cannot take my hands and by pressure bring that heel down to the level of the foot to get the foot straight.  
66 In that process there is pain all over the foot and ankle. In exercising it and attempting to walk on it there is pain. It is very acute on the bottom here. It is painful in these bones, in the instep and underneath the top of the foot, that is, in the bones inside, and then it is painful in the region of the ankle, inside of the ankle. As I hold my foot here, without putting any pressure upon it, it is painful. It pains me at this time. It has been more or



(Testimony of P. R. Sheaff.)

less painful since this injury. There is much  
67 less pain now than at the time I was in bed.

There is a big difference. The whole foot  
pained me then, only the pain was much worse then.  
At this time, I have the natural feeling nearly all  
over my left foot. There is soreness in my left foot  
back of where those two toes were amputated, and  
right where they were amputated, along that region,  
or right in here, and around here (showing on foot).  
The two small toes were amputated and the soreness  
is right where they were trimmed off. The next two

toes at this time are a little sore. If I don't  
68 walk flat-footed, I am unable when I walk to  
put the foot down, and to raise up on it natur-  
ally, like a man would walk, put his heel down first  
and then raise on the [108] ball of his foot to get  
the spring; I can't do that with the left foot. I have  
to walk flat-footed and on the heel; bear the weight  
on the heel. These two toes are drawn up now.  
They were not that way at the time of the accident.

In the right foot, the feeling is not entirely  
69 natural. On the bottom it is very tender and  
sore and on the top there is an area in the  
skin that there is no feeling in, and underneath, in  
the bones, there is a pain in there. The heel is kind  
of sore up a little ways. I know what is meant by  
the "Tendon of Achilles." This is it, this big ten-  
don running up here on the right foot (showing).  
That is sore at this time.

(Testimony of P. R. Sheaff.)

Mr. GEDNEY.—Q. Mr. Sheaff, will you just put your foot up in this chair, your right foot? (Witness places his right foot on a chair.)

70 Q. Now, I will ask you to turn your head.

Now, state where I have my pencil. (Touching foot of the witness with pencil.)

A. I can't feel it.

Q. Where is the pencil now?

A. I can't feel it.

Q. Where is it now?

A. Now, you are touching the heel.

Q. Where is it now? A. Can't feel it.

Q. Where is my pencil now? A. I can't feel it.

Q. Where is it now? A. Can't feel it.

Q. Where is it now? A. Touch that again.

Q. Where is it now? A. I can't feel it.

71 Q. Where is it now? A. I can't feel it.

Q. Where is it now? A. I can't feel it.

Q. Turn your leg over a little bit, and turn your head again. (Witness does as requested.)

Q. Where is my pencil now? A. I can't feel it.

[109]

Q. Where is the pencil now? A. I can't feel it.

Q. Where is the pencil now? A. I can't feel it.

Q. Where is it now?

A. Now, it is coming up the leg, up about here somewhere (showing on leg).

Q. Where is it now?

72 A. Now, it is on the outside of the heel.

Q. Where is it now?

(Testimony of P. R. Sheaff.)

A. Now, it is on that bone sticking out on the middle of the foot.

Q. State whether or not that bone sticking out on the outside of the foot is tender now?

A. A little bit.

WITNESS.—(Continuing.) The right foot does not get warm unless I toast it at the fire. It keeps cold. Since this accident, that right foot is colder than the other. I think the right foot is colder now than the left foot.

73      Mr. GEDNEY.—We ask to have the jurors feel of the feet at this time.

The COURT.—The jurors may do as they wish.

(Some of the jurors feel of the witness' feet.)

WITNESS.—(Continuing.) I will be twenty-nine the first of next month. Before this accident happened I was about six feet six inches. My height now is about the same. Before this accident when I was working I weighed about two hundred and five pounds. I may weigh about approximately one hundred and eighty-five pounds now. When I was not  
74      working, I would weigh about two hundred and ten or two hundred and twelve pounds.

I have suffered mentally since this accident. My suffering was caused by worrying about my condition. I suffer now physically at all times. Before this accident I slept well. Now, my rest is broken, I



(Testimony of P. R. Sheaff.)

do not sleep well. Since the accident, I wake up any time now, I can't sleep [110] for any length of time. I get nervous, and my feet get to bothering me, and my back, and I can't sleep good. This has affected my nervous system. I was not ner-

75 vious before the accident, and I am now. My experience in running a stationary engine before I was hurt was altogether about five or six months. In my present condition I would not be able to run a stationary engine. Besides going in a wheel-chair and on crutches, I have gotten about a little bit on my knees. I have never tried to walk with one cane. I have tried to walk with a cane and a crutch. I could not do that very well because I can't balance myself. This accident occurred about

10:20 or 10:30 in the morning. It was a fine  
76 day. It was warm. I had on a suit of underwear and an overshirt and a pair of overalls, a pair of socks, and a pair of high top boots. I was perspiring freely at the time. I did not at that time know that electricity would jump. Up to that time I had never heard that electricity would jump. Under my agreement with the company, I was to receive four dollars a day. While working for this Power

Company I got four dollars a day, except a few  
77 days, and then I got four and a half a day.

When I got the check after I was in Fallon, after the injury, I was paid four and a half a day. The check, part of it was for four dollars a day, and

(Testimony of P. R. Sheaff.)

part was for four and a half. I sent that check to Judge Curler. I afterward received it again. He told me to go ahead and cash it. The wages of a laborer at that time and working for that company was four dollars a day.

Cross-examination by Mr. CANNON.

On the day of the accident, my eyesight and  
78 my hearing were good. As far as I am able  
to say now, I was in practically perfect physical condition. I was born in Kent County, England, in a town of about fifteen hundred or two thousand  
[111] people. When I was seven years of age my parents moved to the city of Canterbury. Canterbury has a population of about thirty thousand. I lived there about ten years, and left there at the age of seventeen. There were no street-cars in Canterbury at that time. I don't remember whether or not I knew of electricity being used in those cities  
in one way or another, industrially. I graduated  
79 ated from the grammar school at twelve years of age and afterwards went to the high-school—about three or four months. We did not take up physics in the grade I was in. I left high school at the age of about twelve years and four months and went to work in a drug-store. I worked in the drug-store, roughly, somewhere around about six months. I was washing bottles. The first time I ever had anything to do with steam was in British Columbia

(Testimony of P. R. Sheaff.)

in 1902. I was seventeen at that time. After  
80 leaving Canterbury I went to British Columbia. I came over to the United States from British Columbia a day or so. The first I ever had anything to do with steam was about one hundred and fifty or two hundred miles up the coast from Vancouver. It was in a lumber camp. I went to work first with the steam firing a boiler. Steam was used to haul logs in from the woods. It was used in a donkey-engine. One end of the cable was fastened to a log and then the cable wound around a drum.

There was no electricity used there. In coming  
81 from England to British Columbia, I passed through Montreal and Winnipeg, and I think that is all the large cities there are, that is all I remember. I went through Vancouver in British Columbia. I had probably heard something of the use of electricity before that time, before I was seventeen years of age. I don't know now whether I did know at that time or not. I presume I possibly did. About twelve years of age was the usual age for the boys, I think, to graduate [112] from grammar school. I don't remember when it was first  
82 called to my attention that electricity was used in the arts in any way to run street-cars, or to do anything in a business way. I don't think I had seen street-cars operated by the trolley by the time I was seventeen years of age. I don't know where I would see them. I don't remember whether



(Testimony of P. R. Sheaff.)

or not I saw them in Montreal. I am pretty sure they were operated in Vancouver when I first went there, although I can't recollect, but I am positive they were operating them there. I remained  
83 at this lumber camp the first time about three months. I worked there again afterward about five months. Part of the time I was acting as a waiter, and part of the time as swamper, and part of the time as fireman and part of the time I was running the engine. I was eighteen before I got to running an engine. I had been two or three months about a steam-engine before I was permitted to run it. In running this steam-engine, I did not understand its parts quite perfectly, not then. I understood just to open the throttle and she would  
84 run herself. After I was running it for some little time I was left in charge of the engine by those over me, and so I had, for some period of that time, actual charge of that steam engine. I was doing my own firing. I did not do any repairs on it or anything. I was put in charge of it some time along the following spring, about five months from the time I went there. All my experience about a steam engine only occupied something like  
85 about two months before I was put in charge of it. I remained in charge of it about a month. The next experience I had in the operation of steam engines was in 1906, at Millers, Nevada. I did not go from British Columbia straight to Nevada.

(Testimony of P. R. Sheaff.)

In the meantime I went to Australia and New Zealand on a steamship. I was working as [113] coal passer. During that time I was passing coal and dumping ashes on the steamer "Moana." That steamer was electrically lighted. I presume it had electric motors and generators in it, although I  
86 never saw them. I was in the engine-room, but not a great deal. I was in there once or twice. I worked in Sidney, Australia, a little while cleaning the bilges on this steamship. I worked in New Zealand. I dug gum for a while. I didn't come back in the same ship. I came back on the steamer "Sonoma." That was a ship landing at San Francisco. I came from New Zealand to San Francisco. I paid my passage. I was a passenger coming back. I landed in San Francisco in 1904. I remained in San Francisco about a couple of  
87 hours. I went to Oakland. I lived in Oakland somewhere about a month. Oakland is just across the bay from San Francisco. I make my home in Oakland. I have lived altogether in Oakland six or eight months. During the time that I lived in Oakland, I was accustomed to be in San Francisco, more or less. I worked in San Francisco. I took tickets at a theater door about two weeks. I rode on the street-cars in San Francisco—trolley-cars run by electricity. I have ridden on the street-cars in Oakland run by electricity. I suppose my atten-

(Testimony of P. R. Sheaff.)

tion had been directed to the fact that electricity was in common use in the arts prior to 1904. I don't think my curiosity had been aroused concerning electricity. I can't say that I was quite a reader of the magazines and the current topics of the day at that time. Since that time, in recent years, I have been quite an industrious reader of certain kinds of reading. I don't know which way my taste does run. At any rate, even in 1904, I knew they had electric lights, and that they ran street-cars and other things by electricity. I did not know that

electricity was a dangerous thing. In [114] 1904, I did not know that people could be killed by electricity. I did not know then

that in some states people are executed with electricity. I have learned that fact since. I don't remember when I first saw an electric battery. I think I have received light electric shocks experimenting, and so forth. I think it was when I was a boy, about sixteen or seventeen years of age that I first had my attention attracted to the fact that electricity would give you a shock if you happened

to get close to it, or in contact with it. That was before I left Canterbury. That was at a County Fair and you paid the fellow a small fee and you got a shock. I presume he had an electric battery, or electric apparatus there at that time. I was told it was electricity he was using. I took hold of some handles, or something that he had there, and



(Testimony of P. R. Sheaff.)

made a connection and received a shock through my system, and from that time on, at any rate, I

91       guess I knew that electricity would do that sort of thing. I learned my trade as an engineer of steam engines, or stationary en-

gineer in British Columbia. Since then, I have had more experience to fit me as an engineer. I have had

experience at Millers, Nevada, and in Sabrina Lake, California. At Millers, the plant was called the

Tonopah Mining Company's plant. I was employed at the Esmeralda Power Company's plant at Millers.

The first time was about April, 1906. That was

when I came back from New Zealand. In 1906, I was working on boilers on a steamship running be-

92       tween Victoria, British Columbia, and Skagway, Alaska. After coming back to San

Francisco, I went North again and ran on a ship, the "Princess May," from Victoria to Skagway.

I think she is an English ship. That was electrically lighted. First I went to work passing coal and

afterwards I went to work as a fireman. I was working as a fireman on the steamship "Princess

May" plying between [115] Victoria and Skagway. I worked at that time as fireman about seven

months. During all that seven months we used to have to shine the tops of the cylinders in port. I did

93       not have anything to do with the electric generators or motors on that ship. I think I

have seen them. There was only one of them,

(Testimony of P. R. Sheaff.)

I think. I knew the office of it. I knew that a generator was a mechanical appliance by which the electricity which was used on the ship was generated. I learned the name of it and knew that it was a generator at that time. We had a dynamo. I have since learned that a dynamo and a generator are practically the same thing. They did not have  
94 any motors or use electricity for power at all on that ship to my knowledge. That was all the experience I had with a steam engine before going to Millers, Nevada. When I stated to the jury that my trade was that of a stationary engineer, I based that on the experience I have detailed to you here now, and such additional experience as I received at the Esmeralda Power Company. At the Esmeralda Power Company I was first employed as an oiler. I remained an oiler about six weeks or two months. I was also employed as a fire-  
95 man there; that employment was in 1906, and in 1907 also. I was an oiler in 1906, and I was an oiler also in the month of May, 1907, from the 11th of May, 1907, to the 28th day of May, 1907. I was an oiler in each of those years 1906-1907. As fireman, I was in the room or in the building where the stationary engines were, or the steam engines. Not in the same room, but in the same building. The place where I was acting as fireman, I had to  
96 go up a few steps to get on the level of the floor where the engines were. Those engines were compound engines. By compound engines I mean that the steam is used twice, once in the

(Testimony of P. R. Sheaff.)

high pressure cylinder and again [116] in the low pressure cylinder. These engines had high pressure cylinders and low pressure cylinders. I knew at that time which was a high and a low pressure cylinder. I didn't know the details of the valve gear. Those engines were connected up with something. That was a company for the generation of electricity, and I was working in that power plant. Al-  
97 together I worked in that Esmeralda power plant about eight months in the years 1906-7.

Those stationary engines were connected up with a fly-wheel and generator. A part of the engine itself was the generator. At first there were three engines in that power plant and then they put in the fourth, and each one of those engines was connected with the generator, and the office of that generator was to generate electric current to be used for power and light, I suppose. That Esmeralda power plant distributed electricity in Tonopah and Millers. I  
98 knew the juice went over the wires. As an oiler, my duties were to oil the bearings and wipe the engines and keep the place clean. My duties in or about the generators, as an oiler, was only to wipe them. I worked in my capacity as an oiler in and about the generators or instruments that were generating electricity. There was a switch-board in that power-house. That switch-board was made up of several different sections—well, there were two switch-boards in there, a large one and a smaller one. They stood along on the north side of the build-



(Testimony of P. R. Sheaff.)

ing, and they were made up of sections, and  
99 there were instruments and switches scattered  
among them, I could not tell you how many.  
There were a good many switches on. The office of  
the switch was to cut off the electricity, I presume.  
To cut off or turn on the electricity. During the  
time that I was working in this plant as fireman, or  
oiler, or both, I think I have observed that switch  
being operate. [117] I did not operate it myself.  
Some of them were projecting out from the switch-  
board, and some there was just the handle sticking  
out, just a lever. There was a kind of a slot  
100 where this switch went in. I suppose that  
where that switch went in to the slot, the con-  
tact was made which allowed the current to flow  
through. That was what I understood at that time.  
I did not know just what particular place those  
switches were for, but I knew the purpose of them  
was to turn the current off and to turn the current on  
to make the connection or destroy the connection. I  
could not say when I finally ceased working at the Es-  
meralda company's plant, because I think af-  
101 ter they shut the plant down they changed the  
name of the company. After shutting down  
that time, they did not again open up the engine-room;  
they ran the boilers to run the pumps and to heat the  
mill, the slime tank in the mill. I finally quit that  
employment,—why, I don't remember. I did not  
apply for the position of engineer of that plant at  
that time. That plant was running with three shifts  
part of the time I was there. I don't remember if

(Testimony of P. R. Sheaff.)

there was an engineer in charge of two of the shifts.

I don't remember whether the man in charge  
102 of the plant took a shift in place of the engineer on the third. At that time, before

leaving that position, I don't think I was capable of taking charge of that plant as one of the engineers.

It is not a fact that I applied for the position of engineer there. Part of the time I got \$4.00 a day, and part of the time \$4.50 a day. I got \$4.50 at that

plant. At \$4.50 I was firing the boilers. It  
103 is not a fact that I demanded either the position of engineer or \$4.50 a day, or my time. I

got my time. I guess I quit there. I don't remember the circumstances of my happening to quit. I

know a man named John Eiseman. I don't remember whether I knew him at that time. I don't re-

member when I first got acquainted [118] with him. I quit there about the 28th day of May, 1907,

I think. I don't remember a conversation had with

Mr. Eiseman shortly after the 28th day of May,  
104 1907, himself and myself being present, where

I said to him I had demanded of Mr. McConnell who was in charge of the power-house either \$4.50 per day as an oiler, or a job as engineer, or my

time, and that they gave me my time. I didn't say that. It was a part of the duties of the chief en-

gineer, the engineer in charge of the shift at that power-house to look out for those generators and

switch-boards. Sometimes they had another man there that they called the electrician. At times he

(Testimony of P. R. Sheaff.)

was on a regular shift. I would say I worked  
105 about two months and a half in the engine-  
room, and seven or eight months around that  
plant altogether in the power-house—longer than  
that altogether because afterwards when they didn't  
generate any more, I worked in their running the  
plant as a heating plant. While I was working there  
in that power plant and around those generators and  
oiling them, I didn't know anything of the destruc-  
tive power of electricity. Possibly I knew then that  
electricity could kill. I didn't remember whether

I had or had not heard of people being killed  
106 by strokes of electricity. I don't remember  
whether I had or had not heard of people being  
killed by being struck by lightning. I suppose I  
had though. I did not know that lightning and elec-  
tricity was supposedly the same thing. I knew that  
in the State of New York criminals were executed  
by means of electricity. I don't know whether I  
knew that then or not. I won't say that I did not.

In 1907 I was twenty-two years old. During my  
lifetime I suppose I have kept my eyes pretty  
107 well open about things that were going on  
about me. Electricity was not one of the  
things that was about me a great deal in my ex-  
perience up to that time. On board ship, I suppose  
it was about me [119] all the time, I never had  
anything to do with it. I don't feel certain that I  
did know at that time that electricity could kill if  
administered in large quantities, large voltage.  
After working eight months in that power plant I



(Testimony of P. R. Sheaff.)

could not tell the difference between a hot wire and  
a cold wire. I don't think that I knew that a  
108 hot wire was one charged with electricity and  
a cold wire was one that wasn't. How could  
I tell the difference between a wire that was carrying  
electricity and a wire that was not? I knew that  
there was such a thing as a cold wire, a dead wire.  
And I knew that there was such a thing as a live  
wire. I knew a live wire was one carrying a cur-  
rent of electricity, and I knew that a dead wire was  
one not carrying a current of electricity. I didn't  
know that electricity at a high voltage was carried  
through that power plant, how high it was  
109 carried. I didn't know that it was carried at a  
high voltage. I didn't know anything about  
what voltage it was carrying. I knew there was  
electricity going through the line, going into Tono-  
pah, and I knew it was being generated in large  
quantities for the use of power and light. I worked  
also with the *the* Desert Power and Mill Company.  
I worked with the Desert Power and Mill Company  
in the years 1908 and 1909, and a part of 1910. The  
Desert Power and Mill Company was in  
110 Millers, Nevada. It was part of the old Es-  
meralda power plant, and the remaining part,  
I suppose, was the Tonopah Mining Company's mill.  
I worked part of that time as foreman in a power-  
house. They were not making any electricity there  
in those years. The engines were all shut down and  
the place was in disuse. While working for the  
Desert Power and Mill Company, I was brought into

(Testimony of P. R. Sheaff.)

connection with electric generators or motors. We had two or three motors that ran pumps there. The motor is an electric business that runs by electricity and has a pulley on it and turns machinery.

111 They had three of those motors at [120]

that plant that were operating while I was there. They got their power from Bishop Creek I think, from the Nevada and California Power Company. I operated those three motors during that time I was there. I don't remember how long I operated those motors, but I suppose about a year altogether. In the operation of those motors I was pumping water. I only operated two of them, the third one I didn't operate. I operated those two by throwing the lever. The lever was to stop and

112 start the motors. The office of starting the lever was for the purpose of throwing on or cutting off the electricity. When you used it one way, it would start it, and when you threw it back it would stop. I suppose that when you would throw the lever one way you would start the juice, and when you would throw it the other way you would cut it off. I knew that electricity was being used as the power to operate those motors, and I knew that a

current of electricity was turning those motors  
113 or making those motors work. I suppose the wires came into those motors from poles outside and then they came into the room or building where the motors were and were attached to the motors themselves. I think I knew where those wires were, I think they came in the top, they came

(Testimony of P. R. Sheaff.)

in through the top of the motor and the motor was on the ground. I cannot remember where they came in, whether in the ceiling, the gable of the building, or what part.

Mr. CANNON.—Q. Where did they come in, in the ceiling, the gable of the building, or what  
114 part?

A. I cannot remember that.

WITNESS.—(Continuing.) In operating those motors I was within a few feet of the motors themselves and was accustomed to go about those motors. I didn't do the oiling for those motors. There was someone else doing the oiling. I was operating [121] the motors, and some one else was the oiler. I was not fully in charge of the motors. The man that oiled them was in charge of them, he was the electrician. My position was called fireman, I guess.

That electrical work, that motor work was  
115 only just a small part of my duties. I could work the motor and at the same time do my work at a fireman, too. I don't know whether I touched those wires that were carrying electricity into those motors or not during that year I was operating those motors. I suppose I knew enough not to touch them at that time. I suppose I did know enough to keep away from the live electric wire that was carrying power enough to run a motor. Well, there was no necessity for taking hold of them or anything.

Q. Of course, and you did keep away from  
116 those wires, didn't you?



(Testimony of P. R. Sheaff.)

A. Well, there is no necessity for taking hold of them or anything.

WITNESS.—(Continuing.) Altogether I should think it must have been nearly a year I was about those two motors and those wires connecting with them, and I knew that the power that was operating those motors was received from the wires that came in on the power line to that plant, and that it came from some power-house at some distance from where it was being generated. Up to that time I  
117 had worked both in a power-house where electricity was being generated and had worked at the other end of the line where it was used in the motor. I had worked at both ends of the line. About the 30th of April, 1910, I quit there and during the time I was running these electric motors I was receiving \$135.00 a month. I received the \$135.00 a month for operating an electric motor and as fireman, I should judge at a rough estimate, [122] for about a year. I don't know what other people referred to me as. I don't think I was  
118 called an electrician. I don't think that I received more than the ordinary electrician's pay. I received \$135.00 a month. That was just the same as fireman's pay, because the fireman worked eight hours, and I worked nine on the job. In my position with the Desert Power and Mill Company I was paid a monthly salary. I suppose if anyone had been referring to me they would have said the fellow that runs the boilers up there in the

(Testimony of P. R. Sheaff.)

power-house. I had some steam pumps there  
119 too. I ran the steam pumps during the same  
time, off and on, for the period of about a year.  
All I ran was just the pumps. I ran everything that  
was run in the building. I did not run the engines  
for generating the steam for the steam pumps. I  
fired the boilers, that was principally to heat the mill  
and the slimes in the mill, in the slime tank. I gen-  
erated the steam principally for use in the mill. I  
didn't run the generators. I just wiped the  
120 generators; that was all I had to do with them.

In the Desert Power and Mill Company I was  
running the boilers, firing the boilers, running the  
motors, and running the steam pumps all at the same  
time. I was in charge of everything in that building.  
I remained in charge of everything in that building  
for the course of about a year at \$135.00 a month. I  
didn't have full charge of it for a part of that time.  
I took up that work along about February, 1909, and  
continued it practically without interruption until  
April 20th, 1910, except for going away in the  
121 summer of 1909, it would be about fourteen  
months. Mr. McConnell had charge of it for  
part of that time. I was performing practically the  
same duties as Mr. McConnell was [123] perform-  
ing when he had charge of it. Mr. McConnell had  
charge of the Esmeralda Power Company when I  
was working over there. When Mr. McConnell had  
charge of the Esmeralda Power Company he used to  
see to overseeing the whole thing, the power-house  
and everything. He had charge of the entire plant.

(Testimony of P. R. Sheaff.)

I did not have the same kind of a position  
122 there as Mr. McConnell had. When he was  
working for the Esmeralda Power Company  
we called him the chief. When he was working for  
the Desert Power and Mill Company we called him  
Mac. After I ceased working for the Desert Power  
and Mill Company, somewhere in April, 1910, I be-  
lieve I went to Oakland. I remained in Oakland  
about a month or six weeks. I didn't take up any  
occupation in Oakland. From Oakland I went to  
different places in California. I just loafed around  
on a vacation. When I got ready to go to  
123. work again I went to work in San Francisco,  
that work had no relation to machinery at all  
or to electricity. I took up that occupation about  
two weeks and then went over to Oakland again. In  
Oakland I helped my uncle once in a while. He is a  
gardener. I next did work in connection with  
mechanical appliances after leaving Millers in the  
spring of 1910 at the Fairview Substation. I took  
up this occupation at Lake Sabrina in 1907-  
124 1908. That was between my employment with  
the Esmeralda Power Company and my em-  
ployment with the Desert Power and Mill Company.  
Lake Sabrina is on the middle fork of Bishop Creek  
in Inyo County, California. They did not have elec-  
tric generators or motors there then. I don't think  
they had electric motors when I first went there.  
They had electric motors while I was there. They  
installed an electric motor there while I was there.  
I tried to run [124] it for about five minutes, I



(Testimony of P. R. Sheaff.)

judge. I said in my direct testimony yesterday that  
part of my occupation there was throwing the switch  
at that electric motor. We only tried to make  
125 one trip with it out on the wire and it would  
not work; I guess the electrician didn't wire it  
up right, and it couldn't pull itself in. It was a mov-  
able motor. It was a crane running on a cable across  
the canyon. It was operated by a motor within it-  
self, the whole thing was built altogether. I tried to  
operate across that canyon on a wire. I was in a  
cab. I could not make it work, it would not pull.

They did not have an electric hoist at this  
126 place while I was there. I think they took  
this motor down that fall while I was working  
there. It was in operation the following summer. I  
think it was only operated for a few trips to the best  
of my recollection. It didn't give satisfactory ser-  
vice, and they stopped running it. There was an  
engineer on it; there was an electrician. I started to  
run it instead of the engineer because that engineer  
was not there the fall before. The reason I under-  
took to run a motor at that time across a canyon on  
a wire was that there was an electrician right there.

I was going to run it if it would run, I was  
127 going to test it anyhow. I don't remember if

I was assigned the duty of running it at that  
time. The master mechanic put me to work to run  
it at that time. I had not been working with  
the master mechanic there. I had been running a  
little water pump. That pump was operated by  
steam. I was running the pump. I just took the

(Testimony of P. R. Sheaff.)

steam direct from the boiler that stood there close to  
it. That boiler was not connected with steam  
128 engines in some other part of the plant. The  
steam in that boiler was made by a fire of wood  
in the boiler. I operated that; I [125] did that.  
I operated that boiler and got my steam to run my  
water pump with it. I did that kind of work just a  
few days, a few nights. I was on night shift; when  
I went up there I got this job as night watchman, and  
to keep this pump cleaned out of water. In connec-  
tion with my duties as night watchman, I had to fire  
this boiler and had to run this pump. I did  
129 this, I should judge, a couple of weeks, some-  
thing like that. Around that place, I also ran  
a little steam hoisting engine that operated the swing-  
ing boom derrick; and I worked at other jobs; I  
helped the blacksmith around there. I guess that is  
about all. I operated the engine that ran the derrick  
about two months in 1907. I had to run the steam  
engine and had to handle the levers in order to oper-  
ate the derrick. I had entire charge of that work, so  
far as running it. They did not have any elec-  
130 tric appliances there in 1907. They did in 1908.  
In 1908 they had a little steam engine that ran  
a generator to operate this motor on this crane. The  
electrician had charge of that steam engine and that  
generator. I didn't do any work on that. I didn't  
do any work at all around that steam engine or  
around that generator. I don't remember how the  
wires were carried from the generator to the motor.

(Testimony of P. R. Sheaff.)

I don't think I ever knew. I was not present  
131 while the electrician was setting up that machinery there. I helped the blacksmith. They used to use cars there to haul rock out into this dam, and dump the rock, and they would take railroad iron and cut it in lengths of about five feet, and then they would cross them, and then they would rivet these irons, and then they would put big heavy rocks on these flat cars; that was what I was helping the blacksmith to do. There were three across this way, and several this way (illustrating), and then the middle one [126] underneath would set in a socket at each end of the car, and then they could tip it  
132 easily; and then there was a toggle and hook to hold it, so when the man went to unload it he could hit this toggle, and it would tip this; the weight of the rock would tip over, you see, and fall down in the dam. I worked on one or two of these contrivances after I left there. I went to the Desert Power and Mill Company and my next employment after leaving the Desert Power and Mill Company April 20th, 1911, that had any connection with machinery was with the Pacific Power Company.  
133 I was employed by the Pacific Power Company along about April, 1911. I was employed first in Hawthorne. The first work I did at Hawthorne, we carried a lot of crates with insulators in them up to the door of the warehouse and labelled them with paint—painted letters on them. As near as I can remember we painted on them "Pacific Power Company, Fallon, Nevada." Those insulators were just



(Testimony of P. R. Sheaff.)

like those on the model there, only they were larger. They must have been about that big (illustrating),  
about a foot across the top. That was the  
134 general form of them, what appears on the  
model there. It looks like them. Those insulators were to go on the poles to lay the wires on, to carry the wires. They were called insulators because they insulate, I presume. The object was to insulate the wire from the pole to keep the electricity from escaping, I suppose it is. I knew they were insulators at that time and that was the object and purpose of them. When I saw them at Hawthorne I recognized them. I knew what they were; I had  
seen the same things just a couple of months  
135 before that. I had never taken any notice of  
them before, only two or three months before. Those insulators taken from Hawthorne to Fairview, you understand [127] we put them outside the door so that the teamster could come along and load them on this wagon and take them over to the depot seven miles away to Thorne and then they went by train over to Fallon. I accompanied Mr. Johnson to Fairview. The first work that was assigned me was to dig some holes. I presume that my duties were whatever he told me to do. My wages were  
agreed upon when he employed me, and my  
136 wages were four dollars a day, for a day of  
eight hours, and if I worked over time, it would be fifty cents an hour extra. That line into Fairview ran from the main line that ran to Wonder, from over around Bodie some place. I presume that

(Testimony of P. R. Sheaff.)

was the main power line of the Pacific Power Company. That was what I understood it to be at that time. They started to build a line from this main line over to the substation at Fairview. Fairview is a town situated out in that section somewhere.

137 There are two Fairviews. There is old Fairview and the present Fairview. This substation was up on the hill, up by the mine and mill and the town, and the present town is down below about a quarter or half a mile, down a very steep hill. The substation was up on the hill from the new town, and the old town was a couple of miles from there. The town of Wonder, with reference to Fairview, was about sixteen miles farther on. It is about northeast of Fairview. There is a good

138 wagon-road between those places. The distance to be covered by this line that was to be run from the main power line to the substation at Fairview, I think was about a little over two miles, and this power that was to be carried on that new line was to be used at the Nevada Hills Mine and Mill in Fairview. The Nevada Hills Mill was about two hundred feet from the substation. The mill and the shaft are practically connected, that is, they are so close to each other that it [128] is all the one thing, you might say. There was another

139 substation that belonged to the mining company. I was running this line from the main line to the Pacific Power Company substation. I think Mr. Johnson was right there during all the time that two miles were being put in. I ran a telephone

(Testimony of P. R. Sheaff.)

wire at the same time. That was in the same line I was describing yesterday when I said the telephone wires were carried along parallel about thirty feet from the power line. It was about the same. I didn't help dig all of the holes. There was a gang of us. I helped place the poles. I helped  
140 lay the wires. I think I helped place the insulators on the poles, although I don't remember clearly. I assisted in laying the wire upon the insulators. I had been instructed to do that work by Mr. Johnson. He described it, told me how to do it. Just about the time we had to lay the wires up there, he told me how to tie them, and directed me what to do and told me how to do it. I had difficulty in carrying out his instructions at first. I learned it, I suppose I did. I assisted in laying the wire  
141 during the whole length of the two miles, that two mile line. I think I was there while the connections were being made with the main power line, I don't remember clearly. I can't remember if I was present when the connections were made at the other end with the substation. I think I was working around there when they were connected. I don't remember seeing them connected, but then I think I was working around there. Well, I was sure of their being connected up and of the power being  
142 turned on. I was not sure that the power was turned on after that line was built, but I would surmise that it was. The first time the power was turned on was about two months before the accident. That power was to be carried over that line



(Testimony of P. R. Sheaff.)

and into the substation [129] for use by this Nevada Mining Company. I had been up to the Nevada Hills Mining Company's property. I knew they had a stamp-mill there and all the other stuff that goes with it—whatever was necessary to operate their mining property there. So far as I know, they were running all their mechanical appliances  
143 there by electricity. They were receiving that electricity directly from their own substation, and their substation was in turn receiving its electricity from the Pacific Power Company's substation at Fairview. This same substation that this line I had built connected with. In a word, this Nevada Hills Company received its power from the main line of the Pacific Power Company, the power being carried along this line that I assisted, as I have described, from the Fairview substation to the Nevada Hills own substation, and from their own substation to their mechanical appliances, what-  
144 ever they were. I don't think that power was turned in through the Nevada Hills substation about two months before I was hurt. I think it was turned into the Fairview substation about two months before I was hurt, but I could not say how long before I was hurt it was carried through the Nevada Hills substation, but I knew it was carried there some time before I was hurt, that is, through the Nevada Hills substation. I spoke this morning about a pole that stood out to the west of the model that was shown, and from which a guy wire ran in

(Testimony of P. R. Sheaff.)

towards the lightning-arrester. That guy  
145 wire came from one of the power poles that  
was carrying the wires which led into the sub-  
station. That power pole from which this guy wire  
came was one of the poles that I myself and my co-  
employees had assisted in putting in,—that was a  
part of the line that I helped construct, and those  
wires being carried along that power line were the  
wires that I [130] myself had helped to place  
there. There were three of those wires, and those  
three wires would be the wires that would connect  
up with these three wires that are shown upon  
146 this model that was shown me this morning.

The process would be for the power to be car-  
ried along each of those three wires through these  
wires running along the top of the model and into  
the substation. I suppose the purpose of the sub-  
station was for distributing power. In the substa-  
tion there were some things they called transformers.  
There was a switch-board with some instruments on  
it, and I guess that is about all. There were three  
transformers there in that substation. I presume a  
transformer for each of the power lines running into  
the substation, I would not be sure. After  
147 I had finished with that work that I have de-  
scribed in building this line which carried  
power into this Fairview substation, I went to work  
at the Fairview substation itself. I was assisting  
Mr. Halpenny in placing these transformers and  
handing him tools. I assisted Mr. Halpenny in  
setting up the transformers in the same Fairview

(Testimony of P. R. Sheaff.)

substation. I think I did that work after all the connections had been made preparatory to putting the power into the substation. I think it must have been about three weeks that work took to install the transformers. I didn't know at that time

148 what was the purpose of the transformers. I

knew that electricity was carried into the transformers and I knew the wires went out over to the other company's substation. I think there were transformers in that substation, and I presume the electricity went over those transformers before being used at that mine. After I had completed that work with Mr. Halpenny of installing the transformers, I went to Wonder with him. My work under Mr. Johnson ceased [131] about the time the line was

completed to the substation in Fairview. I

149 don't remember if the power was turned on

that line and into the substation before I quit

Mr. Johnson. If it was not before I quit Mr. John-

son, it might have been a week or two after. I would

not pretend to say, but I think I could safely say

that it was not more than two weeks at the outside.

The power must have been turned in before the

transformers were set up. When I went to Wonder

the work was about the same nature as it had been in

Fairview. The work was around the Wonder sub-

station. I think the Wonder substation had

150 just been built when I went there. It prob-

ably had not the finishing touches, but the

building was there. The line was then built from the



(Testimony of P. R. Sheaff.)

main power line into the Wonder station. That was the end of the line and the substation was just being completed. That substation was supplying the mine and the mill in Wonder and the electricity that came through the substation did not go to any other substation before being used. It went direct to the mine and mill at Wonder from the power company's substation, the only substation there. When

151 I went to work at the Wonder substation the first work was moving around and placing these transformers, and then after that we built a line—no, I guess, after that I helped Mr. Halpenny build that lightning-arrester at Wonder. The power must have been turned in to that substation at Wonder before the transformers were installed. I don't think the power was already turned into the Wonder substation when I went there, but pretty soon after I went there. I think the electricity was turned on soon after we got there. It was turned on to wires

that were carried into the Wonder substation  
152 in some fashion similar to the way it was carried into the Fairview substation. After I assisted Mr. Halpenny [132] in installing the transformers at Wonder, I assisted him in building a lightning-arrester. I did not assist him in building the lightning-arrester at Wonder before I did any more work over at Fairview. I *work* on the lightning-arrester at Fairview before working on the lightning-arrester at Wonder. I think it was about the time that I finished that work of assisting

(Testimony of P. R. Sheaff.)

in installing the transformers at Wonder that  
153 I went to Fairview and worked on the lightning-arrester. After we made that trip to Fairview, I built these other lines that I spoke of this morning that I was assigned to build myself. In installing the transformers at the Fairview substation I was working under Mr. Halpenny's orders, but I didn't exactly work with him. While the lightning-arrester at Fairview was being constructed, I was around the other side of the building, and off to this side, cleaning up the substation, doing whatever work I was assigned to do in that neighborhood. I did some work on the lightning-arrester itself, and I did some work in the substation  
154 at that time. I should judge, it must have been four or five weeks or six before I was doing that work that the power was turned into that substation. The power had been turned into this Fairview substation through these wires about four or five or six weeks before this lightning-arrester was built at all. I knew that. I knew that that power was carried into that substation by means of these three wires shown and described in this model. In connection with constructing the lightning-arrester at Fairview, I helped dig the holes—  
155 the two holes in the center here, for the posts or supports of the lightning-arrester. These four poles that appear in the model here, the end of the model, were put up earlier. They were put up about the time [133] I assisted building the line

(Testimony of P. R. Sheaff.)

itself. They were put up for the purpose of carrying the wires themselves into the substation. This model is incorrect where it puts the poles or posts on the easterly side, those poles or posts should be represented by the wall of the substation itself. This

other model which you use for the purpose of  
156 illustration appears to be a fair representation of the easterly end of the substation.

These three wires that were represented on the model shown me this morning would correspond with the three horizontal wires at the top of this other model, and following them along, they would be carried into the gable end of the substation at these points indicated by these small circles here which look like targets. Then there was an appliance coming out from the gable end of the substation upon which insulators rested practically as shown in

this model that you are now exhibiting to me.

157 The wires were taken from the power poles themselves and carried into this structure.

That is the structure that is on the opposite side of the lightning-arrester from the substation. There were some insulators on there but I don't know how they were placed. I don't remember just where the switches were. There was pipe coming down there, this thing here, this switch, and there was a handle there used for the purpose of operating the switches which disconnected the wires above here or connected them as they desired. When these were disconnected I presume that the power was shut off



(Testimony of P. R. Sheaff.)

from the substation, and when these were  
158 connected the power was carried into the sub-  
station. This part of the structure was com-  
pleted up to the point where the lightning-arrester  
is about the same time I completed the line from the  
main line into the substation. Upon the lightning-  
arrester [134] itself, I bored some holes with a  
brace and bit in these timbers, those you represent  
there, the horizontal timbers appearing on the light-  
ning-arrester. I bored some holes for the purpose of  
putting these pins down through on which the  
159 insulators were built or placed. I did not  
assist in putting on any of the insulators.  
During the time that lightning-arrester was being  
built, I was working around under Mr. Halpenny  
and was within call to do whatever I was directed to  
do. He could get me at any time. I worked on that  
lightning-arrester at that time, oh, probably twenty  
minutes, possibly half an hour. The other kind of  
work I was doing about there was squaring up and  
cleaning up around the sides of the substation, and  
on the inside, and straightening things around.

This substation was built practically on the  
160 top of a hill or knoll. It was practically level  
because there was a road running past there  
and that was practically level, but it was not level  
like the floor. On the opposite side, the back end of  
the substation, was level out to along about in here  
somewhere from the building (indicating on model).  
Where this lightning-arrester was built, the ground  
began to slope along in here, along about where the

(Testimony of P. R. Sheaff.)

posts were, and then continued to slope out along down the hill. Beyond this structure here it sloped down pretty steep.

(Points of the compass are marked on defendant's model.)

161       The land sloped on the westerly side of the substation and kind of towards the northwest. It did not slope immediately. It would be over this way, kind of off this corner. I didn't assist in building a fence around this [135] arrester. I don't think I was there when it was being done. I don't know when that fence was put there. It was not there at the time I did this work I spoke of in the construction of the lightning-arrester. I first saw that fence there on the morning of the 18th of 162       July, 1911. When I arrived there in the morning of the 18th of July, I saw the lightning-arrester fenced in. I had to remove some of the wires, take the staples out, to get into the enclosure where the lightning-arrester was. I think I next went back to Wonder, the same evening, or the next morning after that lightning-arrester at Fairview was built. At Wonder, I helped put up a lightning-arrester there, and put up a line there up to the mine in Wonder. I did not build that line myself from the Wonder substation up to the 163       mine. I didn't build a line myself, I had men helping me. I was in charge of it under Mr. Halpenny; under his direction. He directed me to build that line. He didn't give me certain men to assist me. There were men helping me and I took

(Testimony of P. R. Sheaff.)

charge of the building of that line. That line was built from the Wonder substation to the Wonder Mining Company's mine, about a quarter of a mile. I carried three wires from the Wonder substation to the mine. I don't know who superintended the digging of the holes for that installation. I  
164 dug some of them. I directed the putting up of some of the poles. I laid the wires on those poles. I personally laid the wires on that line from the Wonder substation to the mine. I placed the insulators. I attached the wires to the insulators. That work was done after I assisted with the lightning-arrester at the Wonder station. The lightning-arrester at Wonder was not built upon the same plan and did not have the same general appearance as the one at Fairview. It [136] was placed a  
165 little differently. It was built entirely different from that. There were pipes on it. I guess the pipes carried down from the power wire making a turn over an insulator and then breaking off was the same construction at Wonder as at Fairview. They had on the opposite side these dead wires running from no wire and running down this arm and turned pretty close to the wire or pipe connected with the power wire,—that was the only similarity between the two. I think it had practically, although differently placed, the same sets of wires as the one at Fairview. I don't know whether this wiring was done before I left Fairview. I  
166 think those pipes were up there. I think they were running from the lightning-arrester up



(Testimony of P. R. Sheaff.)

to this insulator, and at any rate up near the power line. That work had been done before I went back to Wonder to do the other work. I think these opposite wires, these wires without connections, had been put up at that time in Fairview. So far as I know, this lightning-arrester at Fairview was complete when I left there to go up to Wonder. The wires from the end of these, short dead wires carrying to the ground, were not on at that time.

167 I don't remember seeing them. I didn't assist in putting on the pipes on the Wonder lightning-arrester. I don't think I put on any of the insulators. I don't remember of it. I was up there when that work was being done. I remember moving the transformers around on bars in the Wonder substation. I don't remember in assisting in cleaning them. I know Mr. Greenleaf. I don't remember when Mr. Greenleaf came to the substation at Wonder. I don't remember ever seeing him at the substation at Wonder. I remember seeing

168 him at the substation at Fairview. I could not say if he did any work about the substation at Fairview while the lightning-arrester was being constructed, or thereabouts, because [137] I don't know. I don't think the lightning-arrester at Fairview was completed before I was injured. I don't know whether they ever did any more to it between the time we left Fairview and the time that I came back to Fairview. About five weeks elapsed between these two periods. When this lightning-arrester at Fairview was being put up I don't re-

(Testimony of P. R. Sheaff.)

member if the Nevada Hills Mine was operating or not. I think power was being furnished to the mine about that time. I presume that power was being furnished to that mine through this Fairview substation about the time this lightning-arrester was being built. I do remember Mr. Greenleaf being at Wonder. It must have been several weeks before my accident. I don't remember seeing Mr. Greenleaf about the substation. I don't remember whether I was one of three to take a shift of eight hours each in doing some work upon the transformers, cleaning the transformers at the Wonder substation. I don't remember that work of cleaning the transformers at all. I don't  
169 remember Mr. Greenleaf out at that substation in Wonder. I can't remember what I was doing about the time that Mr. Greenleaf was at Wonder. I was frequently in the substation at Wonder. I was there while it was in operation, while the power was passing through it. I left Wonder just about the time the line was finished. I don't remember if I was there while the transformers were operating. Work was done in the Wonder substation drying out the transformers. I  
171 assisted in that work. I helped dry them out. All I had to do was throw the switch or the lever on the switch-board and stay there and take the temperatures. Well, they had thermometers, glass thermometers, and I think we lowered them with a twine down into the transformer, and left them there for—that is right, we left them hanging

(Testimony of P. R. Sheaff.)

there, and [138] then every so often, we would go and pick them up and look at them, and read the temperature, and if I remember right, we marked it down, I think, the temperatures. The transformer looked like a big tank. There  
172 was a lot of iron stuff inside of it. I didn't see any wires, it was mostly the thing that went inside the tank was covered up by a piece of compboard—a stiff paper. We used electricity in drying out the transformers. The electricity was used for the purpose of creating heat in the transformer. I would use the switch-board in turning on or off the current so as to get the amount of heat that I required, and for that purpose, I took the shift in handling the switches, in turning them  
on and off, and in keeping the proper tem-  
173 perature in the transformers, while this drying process was going on. I think I did take a shift by myself on that work. I could not be sure whether there were others that took other shifts so as to keep that work up during the whole twenty-four hours while that drying process was going on. I worked more than eight hours sometimes, on that shift. I don't know how long I worked at that work, whether it was just an eight-hour shift or not. I don't remember how long altogether I worked at drying out the transformers by means of elec-  
174 tricity. There was only one switch to handle on that switch-board in the transformer. If I remember right, that switch would not catch right, or something; sometimes if you would push it down,



(Testimony of P. R. Sheaff.)

it would not stay down. Other than that defect in the switch itself, I had no difficulty in operating it in the least. I knew how to turn on and turn off the electricity by means of that switch, and I knew the purpose of changing the switch; that it was either to turn on or turn off the electricity. I guess  
175 behind the switch-board there were exposed electric wires. I presume I kept myself from contact with those wires [139] during the time I was doing that work.

Mr. CANNON.—Q. You were careful, in other words, to keep your hands and your person away from those live wires, weren't you?

A. Well, I don't think there was any necessity of getting near them.

Q. At any rate, you didn't make any effort to get in contact with any of those live wires, did you?

A. I don't think so.

Q. In other words, you knew enough about electricity at that time not to get into contact with a live wire, didn't you? A. Yes.

176 WITNESS.—(Continuing.) I don't remember how long altogether I worked at drying those transformers. I have been in substations while the transformers were working. I know they make some kind of a noise, a kind of hum. To the best of my recollection, that noise, you would not be able to hear very far away, not outside of the building. I think you can very readily hear it inside of the building. Inside the transformer station it is a sound that can be readily detected by anyone who

(Testimony of P. R. Sheaff.)

has heard it before. The sound is not such  
177 that it can be easily heard outside of the building and for quite a distance from the building. The sound is a kind of a purr. I don't know whether I would be able to recognize that sound or not. Prior to my accident, I had heard that purring sound in Fairview, that morning, when I went in there to get the pick and shovel. I don't remember clearly that I heard that purring sound in the substation at Fairview that morning, but I suppose I did. I presume I heard it. That morning I went over  
178 to the mill, I don't think that the [140] mill was in operation that morning. They were doing construction work on it. If they were using any motors around there, I didn't see any. Before I went to Fairview on the morning of the accident, I didn't see Mr. Halpenny. I saw him the night before at Wonder, and it was the night before that he directed me to go to Fairview. He told me to go over there and get some clamps made, and to dig some holes, and put these blocks in, and he  
179 would be over and finish up the job. I know I didn't take the concrete blocks along with me. Those clamps had not been ordered before I went over. There was a blacksmith in or about there at the Fairview substation, and the blacksmith's place was over near the shaft of the Nevada Hills people. Mr. Halpenny did not tell me to go over to the blacksmith and get the clamps. I don't know the purpose for which those clamps were to be put around these cement blocks. For the purpose

(Testimony of P. R. Sheaff.)

of connecting the wires with them in some way, I  
suppose. I didn't order the clamps that  
179 morning from the blacksmith directly. I  
went to see Mr. Fleming. I think he was  
called the Construction Engineer of that mill. I  
don't remember of telephoning to Wonder to Mr.  
Halpenny before being injured on that morning.  
There was a telephone in the substation at Fairview.  
I helped construct that telephone line about the  
same time I had helped construct the power line. I  
don't remember calling up Mr. Halpenny that morn-  
ing. I have no recollection of calling up Mr. Hal-  
penny and telling him that the clamps were not yet  
done, were not yet finished. The night before  
180 I went to Fairview, the night before the acci-  
dent, Mr. Halpenny told me to go over there  
and get these clamps made and dig these holes under  
these arms, the arms closest to the switch, he said,  
and did the holes, and put these blocks in, and he  
would be over there to finish up. He says, "I will  
be over to-morrow afternoon or the morning after."  
I presume I was [141] to put the clamps on the  
blocks. He told me to dig the holes on the side of  
the lightning-arrester closest to the switch I think,  
and the switch would be on the side farthest  
181 away from the substation. He told me to dig  
holes underneath those rods—those pipes—un-  
derneath those curved pipes, and to put the concrete  
blocks in the holes and the clamps on the concrete  
blocks. He did not tell me not to touch the wiring  
in any way, that he would be over the next morning,



(Testimony of P. R. Sheaff.)

or the next day, to finish the work himself. He told me to do nothing more. He told me he would be over to finish it. Those instructions I have given you now were the only instructions he gave me as  
182 to any work I was to do. He did not give me any instructions to touch any wire at all. He did not give me any instruction to connect any wire or disconnect any wire. My work, so far as he gave any instructions concerning it, consisted in directions to dig those holes at the places indicated, insert the concrete blocks, and fasten the clamps to the concrete blocks. As far as he told me, that was all I was to do. I received no directions from any other source to do any other work on that day. He  
183 did tell me at that time that he would be over to finish up the work. (The witness' attention was thereupon called to the model produced by the defendant in court concerning which the witness was asked some questions on the day before.) I observe that there are certain wires coming down from the main power wires above and connecting with the lightning-arrester. Upon the lightning-arrester that was built at the Fairview station these were not wires, they were pipes. Those pipes were  
184 half inch pipes. On one side of the lightning-arrester, the side on which I worked on the day of the accident, I don't know that those pipes were connected with the main wires above. I don't think I was working around there when they put the wire up there. I don't remember [142] that I was present when Mr. Halpenny was doing the wir-

(Testimony of P. R. Sheaff.)

ing on this lightning-arrester and using a block of wood between the pipes which are not connected and the pipes which are connected so as to keep the proper distance between these two wires. I don't remember that. I don't remember that I was not there at that time; that is as far as I could say.

185 Mr. GEDNEY.—I would like to ask which lightning-arrester you are talking about, Fairview or Wonder?

Mr. CANNON.—At Fairview; and I am calling his attention to the model of the Fairview station, produced by the defendant.

Q. The point where the pipes which are not connected with the feed-wires above—the point where those three pipes were connected to the lightning-arrester, and to the framework near it, was in plain view, was it not, from the lightning-arrester, and from practically all points surrounding the lightning-arrester?

186 A. Well, they would be, if you looked up to them you could see them.

WITNESS.—(Continuing.) While I was working around there, in the neighborhood of this lightning-arrester, and doing what I did in assisting in the construction of it, I could not have seen, if I cared to look, just how these pipes were attached and insulated, because what work I did on that lightning-arrester was done before the frame was put up. I think Mr. Halpenny and I went back to Wonder together after the lightning-arrester was constructed, and I remember at that time that  
187 this wiring was done. There was nothing

(Testimony of P. R. Sheaff.)

there to prevent me seeing the manner in which the wiring was done. I got kind of sick that afternoon up there and I don't remember a great deal the day they worked on that piping. I think the whole thing was put up in one day. I don't remember as to whether the fence was put up before Mr. Halpenny and I left for Wonder— [143] I don't think it was. To a person standing anywhere in the neighborhood of this lightning-arrester I don't think there was anything to prevent him from seeing, if he had looked, how these connections and at-  
188 tachments of all these pipes and wires were made. I don't think there was any obstruction or impediment to my observation. I think if you looked up you could see it. So far as these lower connections were concerned, I don't think you would have to look up to see them. On this model produced by the defendant, these small posts here, put loosely in these holes, would represent these concrete posts that I went over there to dig the holes for, and to put in.

Mr. CANNON.—Q. You testified yesterday  
189 concerning assisting in drying out the transformers in the Wonder station; do you remember assisting in doing that same character of work in the Fairview station? A. Yes.

WITNESS.—(Continuing.) I can't say whether the drying out of the transformers in the Wonder station took several days. I don't remember that. I don't remember if it took quite a while in the Fairview station. I think I took my shift at the Fair-



(Testimony of P. R. Sheaff.)

view station in the drying out process the same as I did at Wonder. I am not sure. I don't remem-

ber whether, in preparing for that drying out  
190 process of the transformers, both at Wonder  
and at Fairview, that certain temporary wir-

ing had to be done. I remember Mr. Halpenny wound a lot of telephone wire around a drum or something circular in order to get a big long coil of it, and then stretched it out. I remember that there was a galvanized iron tank there in which certain coils were placed and that wires were connected up with these coils for the purpose of producing heat to heat the oil. I remember that that is where these wires wound around the drum were put. He took a

galvanized iron tank that was borrowed [144]  
191 from somebody for that purpose. I think

there was one or two coils in that galvanized iron tank, I don't remember. I presume these coils were then connected up with electric wires from the power-house. I assisted him in winding this telephone wire. I was there working with him and doing whatever he told me to do in connection with that work. I do not remember that there was a transformer that was borrowed from somebody close

to there for the purpose of reducing the cur-  
192 rent for use in heating that oil. I don't re-  
member that there was an extra transformer there that that current went through to use, and that was reduced down to as low as 220 volts.

Q. But you remember that the electricity was put into these coils and that was used as a heating process

(Testimony of P. R. Sheaff.)

for heating this oil?

A. Yes, the oil got hot I remember.

WITNESS.—(Continuing.) The oil was used I suppose after the transformers had been dried out; that is my recollection that the oil was being heated for the purpose of being used in the transformers, and I suppose in order to get the water out. I  
193 operated the switch in the Fairview station in this drying out process practically the same as I operated it in the Wonder station in the drying out process. Before going and looking at the thermometer I don't know as I did anything. I guess I did turn off the current. In going to look at the transformer I don't remember just where the live wires were. I turned off the current so I would not get burnt, I guess. I presume that Mr. Halpenny must  
194 have told me before going among these wires to take the temperature to turn off the current so I would not come in contact with some live wires. I don't recollect his telling me, but I suppose he told me or I would not know. [145]

Q. At any rate you knew that was the purpose of turning off the switch, so the wires would be dead when you went in there to take the temperature?

A. I didn't go any place.

Q. Well, you had to go some place, or look in some place, to look at the thermometer, didn't you?

A. No, not to look at it.

195 Q. Well, to pull it out—you pulled it out and looked at it?

A. Yes, it was fastened to a string—I just pulled

(Testimony of P. R. Sheaff.)

it out and looked at it.

Q. Now, you had to go to the tank, or place where it was, didn't you?     A. Yes.

WITNESS.—(Continuing.) In going to the tank, I came in close proximity to some of these live wires, and I knew then while I was doing that work in the substation, that transformer work, that the power was actually being used in the substation in some manner. I knew that the electricity was  
196 actually being conducted through these wires on a line that I had built into this substation. I also built a line myself from the Wonder substation to the mill, that was only right across through, just across from the station—right close to it. It was about one hundred feet from the Wonder station to the mill. I built that line myself and laid the wires. I strung them—tied them—wired them—insulated them, in whatever way they had to be tied or fastened to the insulators. I did not connect them up. I have never read anything on the subject of  
197 electricity. I may have read—not any technical article. I have not read the ordinary popular every-day literature that is published in relation to electricity. I have read nothing at all. I have not purposely avoided reading [146] articles on electricity. I wasn't particularly stuck on the subject of electricity. I don't remember whether Mr. Halpenny had some electric journals—articles on electricity, and so forth, about the place there. I never went to school any other place than in England. When I first was employed by Mr. Johnson



(Testimony of P. R. Sheaff.)

I was geting four dollars a day. I received checks for my pay.

198 Mr. CANNON.—Q. I call your attention to a check, Number 101, dated Fairview, Nevada, May 1st, 1911, and call your attention to the signature “P. R. Sheaf” on the back, and ask you if that is the first pay check that you received for working for the Pacific Power Company, or one of the first? (Hands check to witness.)

A. Well, I don’t remember the particular check; that is my signature on the back.

Q. That is your signature on the back, is it?

A. Yes, I would not say, though, as to the  
199 check, because I don’t remember; in all probability it is the first check I received.

Q. Well, you identify the signature on the back, so you collected the money represented by that check, didn’t you? A. Yes.

Mr. CANNON.—We offer this in evidence.

Mr. CURLER.—No objection.

The COURT.—It will be admitted then.

**[Defendant's Exhibit "A"—Check.]**

(The check is marked Defendant's Exhibit "A," and reads as follows:)

**"PACIFIC POWER COMPANY**

~~Not Negotiable.~~

No. 101. Fairview, Nev., May 1st, 1911.

Pay to the Order of P. R. Sheaff.....\$60.00

Sixty and no/100 .....Dollars.

200 Account of Fairview Distributing Line—

Labor 15 days @ 4.00 up to and including  
Apr. 30-11.

**PACIFIC POWER COMPANY,**

**By GEO. H. JOHNSON.**

**To PACIFIC POWER COMPANY. [147]**

**Bodie, Cal.**

(Stamped) **PAID Jun. 19, 1911. 53220.**

[Endorsed]: P. R. Sheaff. Pay Washoe County Bank, Reno, Nev. or Order. The I. H. Kent Co., I. H. Kent, Prest. Pay to the Order of Any Bank or Banker, The Anglo & London Paris Na-  
201 tional Bank, San Francisco, Cal. W-4. Pay to the Order of The Anglo & London Paris National Bank, Washoe County Bank."

**WITNESS.**—(Continuing.) While I was working under Mr. Johnson I was laboring all the time. I didn't work as a lineman as I understand the term.

**Mr. CANNON.**—Q. I show you a check, number 117, dated Fairview, Nevada, May 14, 1911, and ask you if you identify that check, and if you identify the signature "P. R. Sheaff" on the back of the check? (Hands check to witness.)

(Testimony of P. R. Sheaff.)

A. Yes, that is my signature all right.

Q. You received the money represented by that check, did you? A. Yes.

202 Mr. CANNON.—We offer the check in evidence.

Mr. CURLER.—No objection.

(The check is admitted in evidence, marked Defendant's Exhibit "B," and reads as follows:)

**[Defendant's Exhibit "B"—Check.]**

**"PACIFIC POWER COMPANY**

~~Not Negotiable.~~

No. 117. Fairview, Nev., May 14th, 1911.

Pay to the Order of P. R. Sheaff.....\$60.00

Sixty and no/100 .....Dollars.

Account of Fairview Distributing System.—6 days labor @ 4.00 in May up to and including 8 days Lineman @ 4.50 May 14–11—Paid in full.

PACIFIC POWER COMPANY,

By GEO. H. JOHNSON.

To PACIFIC POWER COMPANY

Bodie, Cal.

203 [Endorsed]: P. R. Sheaff, Pay to the Order of Pacific Power Co., by I. H. Kent, Pres."

Mr. CANNON.—(Q.) You received the eight days' pay mentioned in the check at four and a half per day, did you, Mr. Sheaff?

A. I could not say, because I have no record of it.

Q. I call your attention to a check dated Bodie, California, [148] 6/1/1911, and ask you if you



(Testimony of P. R. Sheaff.)

identify that check, and if it bears your endorsement?

(Hands check to witness.)

A. Well, that is my signature on the back.

204 Q. You received the money represented by that check, did you?

A. I suppose I did, yes.

Mr. CANNON.—I offer this check in evidence.

Mr. CURLER.—No objection.

(The check is admitted in evidence, marked Defendant's Exhibit "C," and reads as follows:)

**[Defendant's Exhibit "C"—Check.]**

**"HYDRO-ELECTRIC COMPANY**

**~~Not Negotiable.~~**

Bodie, California, 6-1-1911.

68

Pay to the Order of P. R. Sheaff.....\$84.00

Eighty-four and no/100 .....Dollars

Account of Fairview Sub Equipment—Twenty-one days up to and including May 31, 1911.

HYDRO-ELECTRIC COMPANY,

By R. H. HALPENNY.

205 To HYDRO-ELECTRIC COMPANY,

Bodie, Cal.

Stamped PAID, Jul. 12, 1911.

[Endorsed]: P. R. Sheaff. Pay to Nixon National Bank. V. L. Adams. Pay to the Order of any Bank or Banker. The Nixon National Bank, Reno, Nevada."

Mr. CANNON.—Q. Mr. Sheaff, the words "Fairview Sub Equipment" means Fairview substation equipment, doesn't it?

(Testimony of P. R. Sheaff.)

A. I could not be sure as to that, no.

Q. At least that is the place you were working during the time that you earned the money represented by that check, at the Fairview substation?

A. Presumably so, yes.

206 Q. I show you another check, dated Bodie, California, 6-30-1911, number 69, and ask you if you identify that check, and the endorsement "P. R. Sheaff" on the back of it? (Hands check to witness.)

A. Yes, that is my signature. [149]

Q. And the other endorsement on the back of it, "G. M. Gardner," do you identify that signature?

A. Yes, I have seen that signature.

Q. That is Doctor Gardner's signature, is it?

A. Yes, that is Doctor Gardner's.

Q. You received the money represented by this check, did you? A. Yes.

207 Mr. CANNON.—I offer it in evidence.

Mr. GEDNEY.—No objection.

(The check is admitted in evidence, marked Defendant's Exhibit "D," and reads as follows:)

[Defendant's Exhibit "D"—Check.]

"HYDRO-ELECTRIC COMPANY

Not Negotiable.

Bodie, California, 6-30-1911.

69

Pay to the Order of P. R. Sheaff.....\$116.00  
One Hundred Sixteen & no/100.....Dollars.

(Testimony of P. R. Sheaff.)

Account of Wonder Sub Equipment—29 days @  
4.00 up to and including 6/30/11.

HYDRO-ELECTRIC COMPANY,

By R. H. HALPENNY.

To HYDRO-ELECTRIC COMPANY,

Bodie, Cal.

208 (Stamped) PAID Aug. 19-1911. 499.

[Endorsed]: P. R. Sheaff, G. M. Gardner.

Pay to the Order of Nixon National Bank, Reno,  
Nevada. Churchill County Bank, Fallon, Nevada.  
Pay to Yourselves or order The Nixon National  
Bank, Reno, Nevada.”

Mr. CANNON.—Q. I show you a check, number  
118, Wonder, Nevada, 6-30-1911, and ask you if you  
identify that check, and the endorsement on the  
back. (Hands check to witness.)

A. Yes, that is my signature on the back.

Q. You received the money represented by that  
check, did you?

209 A. I suppose I did, yes.

Mr. CANNON.—I offer it in evidence.

Mr. CURLER.—No objection. [150]

(The check is admitted in evidence, marked De-  
fendant's Exhibit “E,” and reads as follows:)

**[Defendant's Exhibit “E”—Check.]**

“PACIFIC POWER COMPANY

~~Not Negotiable.~~

No. 118.

Wonder, Nev. 6-30-1911.

479M.

Pay to the Order of P. R. Sheaff.....\$22.00  
Twenty-two & No/100 .....Dollars.



(Testimony of P. R. Sheaff.)

Account of Wonder Distributing System—51½ days @ 4.00 up to and including 6/30/11.

PACIFIC POWER COMPANY,

By R. H. HALPENNY.

210 To PACIFIC POWER COMPANY

Bodie, Cal.

(Stamped) PAID Aug. 9, 1911.

[Endorsed]: P. R. Sheaff, V. L. Adams, C. L. Benodum. Pay to the Order of Nixon National Bank, Reno, Nevada, Churchill County Bank, Fallon, Nevada. Any Bank or Banker, The Nixon National Bank, Reno, Nevada.”

Mr. CANNON.—Q. I show you a check dated Bodie, California, July 31, 1911, number 72 on the face of it, endorsed “P. R. Sheaff, L. W. Justice,” and ask you if you identify that check and the endorsements thereon? (Hands check to witness.)

A. Yes, that is my signature on the back.

211 Mr. CANNON.—I offer this in evidence.

Mr. CURLER.—If your Honor please, we object to this check upon the ground that it appears there are certain erasures upon the check, which are unexplained at the present time.

Mr. CANNON.—Counsel has just called my attention to the words printed on the margin “Not Negotiable,” with a line drawn through them. The check is not offered for anything in connection with this mark, but is only offered so far as the face of it is concerned, the amount of money paid to Mr.

212 Sheaff, and for what it was paid; and [151]  
I limit the offer to that part of the check that

(Testimony of P. R. Sheaff.)

bears upon the amount of money received by Mr. Sheaff, and for what it was paid to him. We offer it in that limited manner.

The COURT.—It will be admitted.

(The check is marked Defendant's Exhibit "F," and reads as follows:)

**[Defendant's Exhibit "F"—Check.]**

HYDRO-ELECTRIC COMPANY,

~~Not Negotiable.~~

Bodie, California, July 31, 1911.

72 M.

Pay to the Order of P. R. Sheaff.....\$23.00

Twenty-three and no/100 .....Dollars.

213 Account of Wonder Sub Equipment—Electric helper @ 4.00 (5 3/4 days), to and including July 31, 11.

HYDRO-ELECTRIC COMPANY,

By R. H. HALPENNY.

To HYDRO-ELECTRIC COMPANY,

Bodie, Cal.

(Stamped) PAID Oct. 4, 1911.

[Endorsed]: P. R. Sheaff, L. W. Justice, Pay to the Order of ——— National Bank, Reno, Nevada. Churchill County Bank, Fallon, Nevada. Pay to Yourselves or order The Nixon National Bank, Reno, Nevada.

Mr. CANNON.—Q. I show you the next check, number 121, Fallon, Nevada, July 31, 1911,  
214 and ask you if you identify that check, and the endorsements appearing thereon? (Hands check to witness.) A. Yes.

(Testimony of P. R. Sheaff.)

Q. You received the money represented by that check, did you?     A. Yes.

Mr. CANNON.—I offer this check in evidence, with the same exception as in the other case.

Mr. CURLER.—We desire, if your Honor please, to interpose the same objection. The check appears to have certain erasures on it, which are unexplained.

The COURT.—The same class of erasure?

Mr. CANNON.—The erasure is the same as the one on the last check; the words “Not Negotiable” printed across [152] the edge, and scratched  
215     out. I am not offering that part of the check.

The COURT.—The ruling will be the same as to the last check.

(The check is marked Defendant’s Exhibit “G,” and reads as follows:)

**[Defendant’s Exhibit “G”—Check.]**

PACIFIC POWER COMPANY

~~Not Negotiable.~~

No. 121.

Fallon, Nev. July 31, 1911.

602 M.

Pay to the Order of P. R. Sheaff, . . . . . \$57.15  
Fifty-seven and 15/100 . . . . . Dollars.

Account of Wonder Substation & Wonder  
216     Distributing System—Helper @ 4.00 2-¾  
days; lineman @ 4.50 10-¼ days—to and in-



(Testimony of P. R. Sheaff.)

cluding July 31, 1911.

PACIFIC POWER COMPANY,

By R. H. HALPENNY.

To PACIFIC POWER COMPANY,

Bodie, Cal.

(Stamped:) PAID Oct. 4, 1911.

[Endorsed]: P. R. Sheaff. L. W. Justice. Pay to the Order of Nixon National Bank, Reno, Nevada. Churchill County Bank, Fallon, Nevada. Pay to Yourselves or Order The Nixon National Bank, Reno, Nevada.

WITNESS.—(Continuing.) The last two checks offered, both dated July 31, 1911, I received after I was injured. I had employed Judge Curler as my attorney before cashing those two checks. I  
217 had employed him for the purpose of representing me in whatever proceedings I might conclude to take against the Pacific Power Company on account of my injuries. I referred those two checks to Judge Curler for his advise in relation thereto before cashing them and afterward cashed them on his advice. It is my best recollection that the work I was doing during the time I was receiving pay according to those checks, as line-man, was the building of those lines, stringing of the wires and installing them, and all that I have already testified to. [153] During the time  
218 I was under Mr. Halpenny in the Wonder substation doing this transformer work, and also in the Fairview substation doing the transformer work, Mr. Halpenny was from time to time direct-

(Testimony of P. R. Sheaff.)

ing me, giving me instructions as to how to do this work, and I was acting under his instructions in doing my work. I was taking my instructions from him. I don't remember of Mr. Halpenny, during that period, having spoken to me concerning my keeping away from the live wires in those two substations. I don't remember that he spoke to me about those wires in the Wonder substation carrying  
219 sixty-six hundred volts. I will say that he did not speak to me about them containing 6600 volts. I don't remember of him, and I don't think he did. If he did speak to me about keeping away from those live wires I have no recollection of it. That is as far as I want to go. I do remember that he was giving me instructions as to how to do my work right along. I do not remember that he was giving me instructions how to do it  
220 with safety to myself. I don't remember that part of it—the safety part. I don't remember him telling me to cut off the power by means of a switch before taken the temperature in the transformer stations. I did not do it on my own responsibility because I know that was the thing to do, I presume he told me, that is why I did it. I don't remember Mr. Halpenny at any time warning me to keep away. I don't remember him at one time saying to me something in substance like this—‘Now,  
221 Sheaff, I don't want you to think that I think that you are not competent to take care of yourself, but I want you to keep in mind that

(Testimony of P. R. Sheaff.)

you must keep away from these high-power wires, high-tension wires,' and that I said, 'Why I understand that, and I take it all right.' I do not remember any conversation in substance or effect as you have stated, or anything in substance that 'A man cannot be too careful around electrical [154] appliances and high-tension wires.' I did not know that a person could not be too careful about high-tension electric wires. I didn't know it was proper

to be careful about high-tension wires, not to  
222 touch them—I was working under his direction. If he had told me to keep my hands off

I would have kept them off. I don't think I would have put my hands deliberately on a wire carrying a load of electricity. I don't remember having handled that switch at the Fairview station, the switch you have spoken of that disconnected this current from the substation. I would not say that I had not handled it, but I don't remember handling

it. I knew the office of that switch was to  
223 disconnect the power from the substation. I

can't remember whether I did that thing at the Wonder substation, or not. I would not be sure one way or the other. I knew the office of that switch at the Wonder substation was to disconnect and connect up the power with that substation. At the time of my accident, I can't say that the transformers were working in the Wonder station; that was along about the middle of June and we went to Wonder somewhere about the first of June.



(Testimony of P. R. Sheaff.)

When I left Wonder to go to Fairview immediately prior to my accident, the transformers had been working in Wonder then. The transformers had been working for a couple of weeks, I suppose, and I had been accustomed to be in and out of the substation while the transformers were working. I suppose I had heard there this purr or burring noise when the transformers were working. I don't ever remember hearing that burr outside the substation, but I don't know just whether it was there, or whether it was in Fairview, but I have heard that hum and  
225 [155] I knew that sound, and I knew it at that time. I suppose, self-consciously, I would know that when that sound was present in a transformer that a current of electricity was passing through them. That was the general supposition that they were working and the electricity was passing through them, otherwise they would have been silent, I suppose,—otherwise the current could not go up to the mine or mill where it was being used. I understood that at that time. While I was doing this drying out at both the stations and while I was handling the switch doing my shift, I don't remember sparks forming when the switches would  
226 be changed. I don't remember ever turning that switch. In any of those switches that I did turn or that I did handle either at Esmeralda or at Fairview or Wonder I don't remember seeing the formation of an arc or a spark when the connection took place or when it was disconnected. I

(Testimony of P. R. Sheaff.)

have no familiarity with gasoline engines. When I went to Fairview on the morning of the accident, the fence was around the lightning-arrester. To the best of my recollection, it was not around it substantially as you see it represented here in the model

produced by the defendant. It seems to me  
227 that the wires ran from the corner of the building over to these two big posts on this side, on this switch, instead of going to the posts set in that corner there, but I would not be sure as to that. The fence surrounded the lightning-arrester apparatus and was built all around it. The purpose of that fence was to keep people off the company's property, I suppose. The company did not have any property outside of that fence. I do not know what

their property was. I do not know any other  
228 object of that fence—none at all. I knew that it surrounded this lightning-arrester. I don't think it did occur to me that [156] there might be any purpose in putting that fence around those wires. It didn't occur to me to consider whether or not that fence was put around that lightning-arrester because it was a dangerous contrivance. I never thought about that at all. I don't remember of thinking about it. I didn't know it was put around

there as a warning to people, and to keep  
229 animals from getting close to that lightning-arrester, because of the fact that there was a current of electricity there which might do injury to people or animals. I didn't know the purpose of that fence, I never gave any thought to that subject

(Testimony of P. R. Sheaff.)

at all that I remember. I don't remember of seeing any danger sign posted anywhere at the Esmeralda plant when I was working there. If I have seen danger signs posted in the Esmeralda power plant I have forgotten about them. I don't remember of ever seeing any danger signs posted in the Desert Power and Mill Company's plant. I don't remem-

ber, one way or the other as to that. I will  
230 not say there were not danger signs there. I

don't remember whether there were any danger signs anywhere in connection with the Wonder substation, or not. It seems to me I have some kind of recollection of painting a danger sign myself. I did not under Mr. Halpenny's direction or at his request paint a danger sign at the Fairview substation. I think I did at the Wonder substation. I can't describe that danger sign; I forget about it,

what was on it. I believe I painted it with  
231 black paint on a piece of board. I can't say for sure whether I wrote the word "Danger"

on it. I do know this much, however, that I did paint a danger sign and my recollection is that it was at Wonder. I think I nailed that danger [157] sign when I painted it on the switch post at the Wonder station. Using this merely for the purpose of illustration now, that would be posted in the neighborhood of these two poles on this outside structure. I posted it there because Mr. Halpenny told me to. That was the only reason that I posted



(Testimony of P. R. Sheaff.)

it there, certainly. I thought it was to keep  
232 people away from the switch. I thought it  
was to keep them from monkeying with that  
switch. I thought it was just to keep them away  
from the switch so they would not bother it. At  
any rate to the best of my recollection I knew the  
danger sign was up and I made it and put it up my-  
self. I did not see any danger sign inside of the  
Wonder substation—I can't remember seeing any.  
I didn't see any danger sign on the door of the  
Wonder substation. I didn't see any danger sign  
on the inside of the Fairview substation. I  
233 didn't see any danger sign on the door of the  
Fairview substation. I don't remember of  
seeing any. I won't swear there was not a danger  
sign on the door of the Fairview substation; there  
may have been, if there was I did not notice it. On  
the day of my accident I did not see any danger sign  
in the neighborhood of the switch at the Fairview  
substation. On the morning of my accident, I don't  
remember seeing a large board in the neighborhood  
of the switch-board reading something like  
234 this, with large letters: "Danger, high voltage.  
Keep out." I don't remember seeing it. I  
didn't go anywhere near the switch-board. On these  
tallest upright posts on the structure, farthest away  
from the substation, I did not see a large danger sign  
there, "Danger, high voltage. Keep out," or some-  
thing of that substance. I didn't look for any  
around there. In order to get into this enclosure,  
I had to take [158] the staples out to loosen the

(Testimony of P. R. Sheaff.)

wires, so I could get inside the fence. I don't think there was any gate there leading into that enclosure, enclosed by that wire fence. I don't think  
235 there was any way to get into it unless you got in through between the wires. At any rate, that is the means I took of getting into that enclosure where the lightning-arrester was. I knew that was a lightning-arrester. I heard them talking about building a lightning-arrester. I didn't hear them talking about what a lightning-arrester was. I heard them speaking of a lightning-arrester. I don't remember of hearing them say all about a lightning-arrester, and I don't remember hearing the boys around there saying anything about what a lightning-arrester was for. I will say I do  
236 not remember them saying anything about it.

I am quite certain that I entered into that enclosure on the south side of the substation. It is not a fact that I entered in the north side and left the wires down when I went in. I didn't put the wires up after I went in. When I went in there to work I left the wires down. I feel quite positive in my recollection that I went in on the south side. I know I did. When I arrived at the Fairview  
237 station that morning the first thing I did, I got a pick and shovel. I got a pick and shovel after going up to the mill, or up to the mine. I remained around the premises in the mill, I suppose fifteen or twenty minutes, something like that; maybe ten minutes, it may have been half an hour; say between ten minutes and a half an hour. I left

(Testimony of P. R. Sheaff.)

Wonder that morning about half-past four and had about sixteen or seventeen miles to go to Fairview substation. I drove over with two horses and a wagon. It was a stage. I was a passenger

238 on the stage. The stage stopped in Fairview, and I walked up the hill from New Fairview

to the substation. There are [159] no houses or habitations close to this substation. It was sort of mountainous country there. The nearest place where people lived was in the office building at the Mining Company's property, that would be about three hundred feet away. I think there was some children down in the canyon about two hundred or three hundred yards down below there. I

239 think there was a cabin or two over on another hill, southwest about three hundred yards. I

first went to the Mill and saw Mr. Fleming. I got to the mill somewhere about half-past eight or a quarter to nine. After remaining at the mill from ten minutes to half an hour, I went to the substation.

I think I saw Mr. Perrin up around the mill somewhere. He was the electrician for the Nevada Hills Mining Company. After I left Mr. Perrin, I came direct to the substation itself. I also spoke to Mr. Herring, who was employed by the Nevada Hills. I

think he was working on a telephone line out  
240 back of the shaft-house, or the machine-shop.

I saw lots of fellows besides Mr. Herring, they were working up there, but I don't know whether I spoke to any more or not. There was a lot of men working around there. They were mixing concrete,



(Testimony of P. R. Sheaff.)

I think. I have seen those concrete mixers. I don't remember if they were mixing the concrete in that way in the Nevada Hills property that morning. I saw the blacksmith before I went down to the substation. Mr. Fleming ordered the clamps.

I requested him to order the clamps. It was  
241 the blacksmith of the Nevada Hills who was  
to make the clamps, and I had a drawing there  
that Mr. Halpenny had furnished me with. I gave  
it to Mr. Fleming, and I presume he gave it to the  
blacksmith. After that I went to the Fairview sub-  
station for the first time that morning. I got there  
around about nine o'clock. The first thing I did  
when I got there, I got this pick and [160] shovel.  
I got the key from Mr. Perrin, I think, for the pur-  
pose of entering the substation, and I used  
242 that key to enter the substation, and I went  
into the substation to get the pick and shovel.

I got the pick and shovel out of the substation. The  
size of that substation building is about twenty by  
fifteen feet, or something like that. With this gable  
end facing me now, the broad side, as it appears to  
me, would be the twenty foot (referring to model),  
and the sides upon which the roof would slope would  
be the fifteen. It was really, in one sense, wider  
than it was long. There were three transformers  
there at that time, I believe. The trans-  
243 formers were on this side of the building and  
the pick and shovel were over on the other  
side of the building, so that would be the width of  
the building, probably, from the transformers. As

(Testimony of P. R. Sheaff.)

you come in this way, the switch-board was on that side, on the left-hand side; as you went in the switch-board was on the left-hand side. The switch-board, I think, was right on the ground. I can't remember how the wires that went into the gable end of the substation were carried in there. I can't remember seeing just where the wires were in there.

244 I knew there were wires there. I did not remain in the substation that morning over half a minute, I guess. I got my pick and shovel and came around to the south side of the substation and then detached the wires of the fence. I don't remember what implement I used in pulling out the staples. I think it was a pair of pliers though. I had them with me. They belonged to me. I used those pliers for the purpose of stringing wires when

I was building those lines, in tying the wires,  
245 cutting, and all that sort of business. I didn't

have wire cutters with me, as well, just the pliers. The pliers were so arranged that you could cut wire with them, or break off wire with them, and I used them for that purpose. In my work as a

[161] lineman I used a monkey-wrench and several tools. I would have to bore holes for the insulators. We would not use augers for they were already bored. They came prepared. We would attach those insulators, or attach the cross bars to the poles. I attached those. The holes were al-

246 ready bored, and I finished the work of attaching the insulators and then did the work of attaching the wires to the insulators. I used what-

(Testimony of P. R. Sheaff.)

ever tools were necessary to accomplish those various purposes. They were at hand, so that I could use whatever was necessary. When I went into the enclosure after taking out the staples, so far as I can remember, I went to where that first block is represented there (refers to defendant's model). Where this first block is represented and which on the other model is marked "A" I took a direct course to that place. That was the point to which I had  
247 been directed to go by Mr. Halpenny the night before, and that point was the side of the lightning-arrester, farthest from the substation building. When I got to that point, the first thing I did so far as I can remember, I started in to dig a hole there. I got the location of the hole first. I had a plumb line. I had a piece of twine, I forget where I got it from. I tied a rock or something to the twine for the purpose of making a plumb line  
248 to get the true perpendicular. I aimed to place the hole exactly below the end of the pipe that came over that insulator. In locating the hole I did observe that pipe and its position. I think I fastened the string to the pipe about that far from the end of it (showing); about an inch or two. I don't know as anybody told me to do it that way. No, I don't remember Mr. Halpenny telling me to use a plumb line. I don't remember where I got the knowledge of the use of a plumb line; I knew how to use a plumb line then; [162] I knew for  
249 what purpose a plumb line was used. I don't remember Mr. Halpenny telling me to use a



(Testimony of P. R. Sheaff.)

plumb line. I don't think he did tell me then to attach anything to that pipe. He told me to dig the holes under the arms. He said the side nearest the switch. I understood him by the arm to mean the ends of those pipes sticking up there. I think he did use the word "arm." I don't think he did

use the word "horn." In telling me to dig the  
250 holes I don't remember just what the exact words used were, whether he said under the horn or under the arm or under the pipe. He said to dig them on the side nearest the switch. I could not be positive that he did not say the dead side. He told me to dig the holes underneath the arms. I don't know how I happened to dig it underneath the point of the arm. Possibly he had told me to dig it under the point. As near as I can tell you he

told me to dig those holes under the arms  
251 nearest the switch. I don't remember of his telling me to dig them under the point. I

happened to dig them under the point because I presume that is where he wanted them. I don't know how I happened to presume that is where he wanted them. I guess it was because I knew of my own knowledge and experience where they ought to be dug. I had done that same work on the Wonder lightning-arrester and I had dug those holes on the Wonder lightning-arrester, and had assisted in plac-

ing the concrete blocks at the Wonder ar-  
252 rester. I guess that was how I came to know how to do that work. I had done that work at the Wonder substation under the direction and

(Testimony of P. R. Sheaff.)

under the instructions of Mr. Halpenny, with Mr. Halpenny right there telling me how to do it. When I had finished that work at the Wonder substation, I knew how to do that thing, and when I was instructed by Mr. Halpenny to go over there and do that work, I knew how to do the work I was [163] assigned to do. I knew where to place the holes.

At the Wonder substation, when I was doing  
253 that work, clamps were put on the blocks and  
wires were attached to the end of what you call  
the arm down to those clamps. Clamps were put on  
the top of the concrete blocks. I think they were  
also put at the bottom. I think they were put on  
both ends. All that wiring was done from the ends  
of those arms to the clamps at the Wonder lightning-  
arrester before I was sent over to do that work at  
the Fairview lightning-arrester. I didn't hear any  
of them talking about why those wires were  
254 attached from that arm to those concrete  
blocks at the Wonder station. I did not know  
why it was done. I did not know it was to get a  
ground from those wires. At any rate, knew how  
to perform the task that Mr. Halpenny sent me over  
to perform on that day. Before I started each one,  
I located the position of the hole. When I dug the  
first hole I stood between the first and second. I  
suppose there was enough room in there for me to  
work, and in going to the position where I stood in  
doing my work. I went in between the light-  
255 ning-arrester and the posts of the structure  
back of the lightning-arrester, toward the

(Testimony of P. R. Sheaff.)

switch. There was enough room to move around in there. I am pretty sure I threw the dirt that I dug out of that hole down the hill. I didn't pick out any particular spot to do it, that I remember. I think I just dug it out and threw it down the hill. Here is the situation; the ground was sloping and I just shovelled it out and threw it down. As the ground was sloping it might have made a  
256 little pile. I don't know as it was so small corresponding with the amount of earth I had removed. Oh, I suppose, I could have stepped over it. I could step over a pretty good size pile of dirt at that time. In digging that second hole, I think I stood in about the same relative position [164] as I did in the first. I can't remember exactly where I stood. I remember exactly where I threw the earth from the hole, kind of down this way (showing). The slope still continued there. I  
257 think I threw it down the slope. I remember where I stood in digging the third hole. I stood at this side (indicating)—on the north side, over here. I am quite certain where I threw the earth from that, I threw it out to the right. In putting the concrete blocks into those holes, I could put the earth back in again without coming in very close contact with any of these wires or pipes there. I tied my plumb line around all three of these arms. Before I fastened my plumb line around that wire, or before I touched the wire, I must have seen the



(Testimony of P. R. Sheaff.)

wire. I looked at the pipe. I looked at it to  
258 see where to tie the string on it. I didn't  
look at the whole length of the pipe. I looked  
at the end of it that was sticking out to see where  
to tie the string on. I don't know whether I took  
hold of the pipe. I tied the string around it. In  
doing so I guess my fingers came in contact with the  
pipe. Before putting any fingers in contact with that  
pipe, I did not look to see if it was attached  
259 to a high-power wire.

Mr. CANNON.—Q. Isn't it a fact that you  
didn't look because you knew they were disconnected,  
having assisted in building that line?

A. I don't know whether that was the reason I  
didn't look.

WITNESS.—(Continuing.) I must have known  
they were disconnected. I knew there was an in-  
sulator right in front of me when I looked at them.  
I would not have touched them if I didn't think they  
were safe. I felt quite sure from what I observed  
around there that those wires were safe and conse-  
quently I would have touched them without hesita-  
tion. After [165] fastening and attaching  
260 my plumb line to one of them I went about my  
business without any discomfort, in any way,  
shape or form. I felt no shock from any of these  
pipes nearest the switch. I didn't do any work  
around there except to dig the holes. After I had  
dug the three holes I threw my shovel down—laid it  
down, just tossed it, with the intention of going out  
of the enclosure. It was my intention to go out and

(Testimony of P. R. Sheaff.)

then come back again. In going out it was my  
261 intention to go around to the opposite side of  
the lightning-arrester to the one where I had  
been working. I had gone in one way and I was  
going to go out another.

Mr. CANNON.—Q. Now, of course, from your experience that morning, and from your knowledge, as you have testified to it, you knew that the three pipes nearest the switch were dead, and that they were safe, didn't you? A. I must have known it.

Q. And you knew after you dropped your shovel, after finishing the third hole, that you could go out  
the way you went in, with perfect safety to  
262 yourself, didn't you? A. Why, I did, yes.

Q. You elected therefore, not to go by a way you knew was safe, didn't you?

A. Well, the way you put that makes it kind of hard to answer.

Q. But at any rate, your intention was to go the other way? A. Yes.

Q. And you did start to go a way other than the one you knew was safe, didn't you?

A. Yes, but I thought it was safe too.

Q. Now, before going the other way than the one you knew was [166] safe, did you make any  
263 sort of investigation to see whether it was safe or not? A. No.

WITNESS.—(Continuing.) Before starting around, before starting toward the building with the intention of going between the lightning-arrester and the building, I didn't make any sort of an investiga-

(Testimony of P. R. Sheaff.)

tion at all, as to the arms opposite the one under which I was working. I didn't look up to see whether they were fastened to the high-tension wires over my head. I don't know whether I heard the purring of the transformers in the building that very morning. My intention was to go around in  
264 that space between the lightning-arrester and the building without turning my eyes aloft to see whether those pipes were connected with the high-tension wires above. I didn't make any investigation at that time, and before starting for that place, as to whether the transformers were working. I don't remember of listening whether the transformers were working. I was within a few feet of the rear end of the building. The transformers were about three feet from the wall of that building. I was about eight or ten feet from the transformers themselves, when I got the pick and shovel. When I started to go toward the building, I was just  
265 about the same distance from the transformers as when I got the pick and shovel—somewhere about the same distance. The wall of this substation was galvanized iron. I don't know whether you can hear things very readily through galvanized iron. I hadn't noticed when I was in the substation at Fairview or the substation at Wonder, that I could from the inside speak to the boys on the outside; or the boys on the outside could speak to me on the inside without any difficulty. I could not say exactly how far the points of the arms nearest  
266 the substation were from [167] the wall of



(Testimony of P. R. Sheaff.)

the substation itself at Fairview; they were about three or four feet. The distance between the points of the dead arms and the apparatus next to it, near the switch, I think was about the same as it was on the other side. There was a difference in the height of the dead and the other arms. There must have been a difference of a foot or so, eight or ten inches anyhow. The arms were the same, that is, the arms

267        were the same elevation, but the ground fell  
away. On the side nearest the switch the  
ground was lower than on the side nearest the  
substation. Taking the arms nearest the substation,  
I would say the insulated pipes on the arrester would  
be between five and a half and six feet above the  
ground. On my body they would come anywhere be-  
tween five and a half and six feet from the soles of  
my feet. I am six feet six with my shoes on. When  
I was standing near, the points of these arms nearest  
268        the substation would reach somewhere along in  
here on my body (indicating) about to my  
chest. The lower part or point of that arm  
would reach between about here (indicating on body)  
and here, I would judge—somewhere along in here,  
with me standing upright. I have placed my fingers  
along about six inches apart with the upper finger  
about opposite the middle of my shoulder, and I think  
that point would reach me somewhere in that six-inch  
space, approximately, that I have pointed out. On  
that morning I weighed about two hundred and five  
pounds and I had just about the breadth of shoulder

(Testimony of P. R. Sheaff.)

as you see me. In passing through that space  
269 between the part of the lightning-arrester  
nearest the building and the building itself, if  
I walked upright past those points, I would not fill  
that space. I could not say that the space between  
those points and the building was more than three  
feet. Before deciding to go along in that space be-  
tween those points and the building, I don't remem-  
ber listening [168] to see whether the purring  
sound was going on inside the substation. I did not  
take any measures at that time to determine whether  
or not the transformers were working, or  
270 whether the power was on. When I went into  
the substation that morning to get the pick and  
shovel there was nothing to prevent me from deter-  
mining whether the transformers were working or  
not. I could have determined that fact absolutely  
for myself by listening for the purring sound. Be-  
fore entering this enclosure at all, I could have de-  
termined to my own satisfaction whether the power  
was passing into the substation. I don't remember  
taking any means to ascertain that fact before enter-  
ing that enclosure surrounding the lightning-arrester.

Mr. CANNON.—Q. Your attention was called this  
morning to your testimony with relation to  
271 hearing that purring sound the morning of the  
accident, and some question was made about it,  
before adjournment; I call your attention to your  
testimony as follows: (Reads:) “Mr. Cannot. (Q.)  
You have been in substations while the transformers  
were working, haven't you? A. Yes. Q. You know

(Testimony of P. R. Sheaff.)

they make a noise, make a purring kind of noise, don't they? A. Yes, there is some kind of a noise, a kind of hum. Q. That noise is sufficiently loud to be heard a considerable distance, isn't it? A. To the best of my recollection, you would not be able  
272 to hear it very far away, not outside of the building. Q. Well, you can very readily hear it inside the building, can't you? A. I think so. Q. Inside the transformer station it is a sound that can be readily detected by anybody who has heard it before, can't it? A. Yes. Q. Is not that sound such that it can easily be heard outside the building, and for quite a distance from the building? A. No. Q. Describe that sound, as well as you can. A. Well, it is a [169] kind of a purr. Q. A kind of a purring sound? A. Yes. Q. And is of such a  
273 peculiar nature that it is easy enough to detect it, and recognize it after you have once heard it, is it? A. I don't know whether I would be able to recognize it or not. Q. Where, prior to your accident, had you heard that purring sound in substations? A. I had heard it in Fairview that morning. Q. In Fairview what? A. That morning. Q. That morning? A. Yes. Q. You heard that purring sound then, in the substation at Fairview the morning of your accident, did you? A. I  
274 think I did, yes. Q. When you went in there to get the pick and shovel, you heard that purring sound, did you? A. I don't remember clearly, but I suppose I did. Q. That is your best recollection, isn't it? A. I presume I heard it. Q. Did



(Testimony of P. R. Sheaff.)

you go down to the other substation, the substation of the Nevada Hills people, that morning? A. I don't think so." That is correct, isn't it? A. Yes.

WITNESS.—(Continuing.) Before starting for the point, where I threw away the shovel, toward the building, I don't remember listening to hear  
275 the purr of the transformers. I did not look at the arm or arms nearest the building. I did not follow those arms, those pipes or arms, up to their connection with the power line above. I don't remember doing anything of that kind. My intention was to go around to the other side of the building. I don't remember listening for anything for the purpose of finding out whether there was power there or not. I threw my shovel away and went toward that building, without thinking of the danger, or without thinking of any possibility of danger.

276 Mr. CANNON.—Q. It is a fact then, isn't it, that you wandered over to that point without any thought on that subject at all? [170]

A. Yes.

Q. Going back to your experience on poles and stringing of wires on poles, you had become quite expert at that business, hadn't you?

A. No, not an expert.

Q. Well, you were fairly handy about climbing those poles with the appliances you used, weren't you? A. Yes, climbing.

Q. What is it? A. I could climb a pole.

WITNESS.—(Continuing.) I could not climb

(Testimony of P. R. Sheaff.)

277     them readily and could not work up there with  
as any of the linemen. I don't know as I  
could show off and do some stunts up on those poles.  
I could not do any acrobatics or anything of that  
kind on the poles with the boys. (Witness is shown  
photograph.) I have seen a photograph like this  
one before. That photograph is a picture of myself  
taken in Wonder—the date I could not tell you. It  
was taken, though, I suppose, a few weeks, a week  
or two before the accident. It was while Mr.  
278     Halpenny and I were working together. I  
think Mr. Halpenny took the picture. I think  
I took one of him about that time. That picture is  
a fairly accurate representation of the scene it pur-  
ports to portray. This photograph looks like the  
last pole along the line. The cluster of poles and  
insulators there in the center would be the switch,  
which would be this outer construction on the model.  
That pole which I am on would be the pole from  
which the guy wire ran down close to the light-  
ning-arrester in Wonder. I helped to erect  
279     this pole over here (indicating on picture).

I don't think I worked on the pole in the cen-  
ter. I didn't help with any of the wires on that left-  
hand [171] pole. I don't think I helped with the  
pole where my picture appears to be. I don't re-  
member working in this cluster of insulators and  
clusters of wires in the center. I would not say that  
I did not work in there, but I don't remember. I  
was in the power plant on Bishop Creek, California;

(Testimony of P. R. Sheaff.)

it belonged to the Nevada-California Power  
280 Company. I just stepped inside the door.

That must have been either in 1907 or 1908. I know now that their power plant is on Mill Creek. I didn't know then where it was, but I knew it was at some place some distance away, and that the power had to be transmitted over these three wires. I spoke the other day about having different sizes of wires on reels and that the wire had to be reeled off for the purpose of using the power wires and the telephone wires. There was a scheme rigged up by which the wire would be reeled off the differ-  
281 ent reels by sending the wagon ahead and by using horses for that purpose. I could not tell you who got up that idea. I did not. Before that they didn't pull the wires off the reels by hand. The power wire was of copper, the telephone galvanized iron. I had no difficulty in determining what kind of wire it was they were using, the material and size. I made these concrete blocks that were used at the Wonder station and which were going to be used at the Fairview station. Mr. Halpenny told me how to make them. I don't know  
282 whether the work around Wonder and Fairview was practically done or not at the time of my accident. I suppose that the work was done in Wonder. Mr. Halpenny and I had already arranged between ourselves that the work was to be finished up and that we were going to leave there in a day or so. I did a little blasting between the main line and the substation at Fairview. I used dyna-



(Testimony of P. R. Sheaff.)

mite. I loaded two holes. I think I fixed the caps on them, the fuse in the caps, and prepared them.

You bet dynamite is a dangerous agency. I  
283 took [172] considerable care about fixing  
those things. I seen men doing it around  
Bishop Creek. I learned how to prepare dynamite  
and did blasting by observing men doing it. I had  
seen men doing it a great number of times. I had  
seen men doing blasting with dynamite oftener than  
I had seen men working around live electric wires.  
I had not seen men working about live electric wires  
for a long time. I think I was around when we were  
building the line from the main line to Fairview and  
while the connections were being made with  
284 the main line. I was around and about when  
the connections were being made with the Fair-  
view power-house and the Wonder power-house. I  
was there, and suppose I was paying attention to  
what was going on. I don't think I was paying as  
much attention to them as to the men who were blast-  
ing down in Bishop, or wherever it was. It always  
had a fascination for me to see them plugging a hole  
with dynamite and a heavily charged wire with elec-  
trictiy had no fascination for me. I don't know that  
it had a sort of repulsion for me. I don't re-  
285 member anything about having any feeling  
that I would like to keep away from it. I have  
said that since this accident happened, I have re-  
ceived my support through my friends. Some of the  
friends are Doctor Gardner, Mr. Justice, Mr. Adam  
Farrington, Mr. Will Farrington and Mr. Adams.

(Testimony of P. R. Sheaff.)

My brother was the only friend who assisted me within six or eight months after the accident. The Pacific Power Company helped me. I would not particularly call the Pacific Power Company a friend. I suppose I was in friendly correspondence with them

for months after the accident and receiving assistance from them. The company paid Dr.

Gardner some money, I could not say the exact amount. Mr. Justice was the nurse and the company paid him on account of his services as my nurse, \$400.00, I think that was the amount. The company did not pay me anything [173] or advance me some money in cash. I recall Mr. Chatfield turning me over some cash on the first occasion that he called on me. It was \$50.00. And the company also paid

my hotel bills for quite a long time, for several months at Fallon, and also paid part of my drug bill at Fallon. In all up to the time that

I commenced suit against the company, they had advanced to me or paid to me on my account I suppose about \$1000.00, or thereabouts, between the time I was injured in July, and the following April, I think, when the suit was brought. As the bills came in I sent some of the bills to the company. I was reporting to the company in my letters as time went on

how I was getting along. I can't remember whether the company through its agents had

been strongly advising me to go to some hospital in San Francisco at the company's expense, for the purpose of getting expert treatment. It seems to me that Mr. Poole suggested that I go to Los An-

(Testimony of P. R. Sheaff.)

geles. I think he did write me that I go to any hospital that I might suggest, or that might be recommended, for the purpose of getting expert surgical treatment. I don't know whether he urged me or not. He probably asked or suggested it to me. I was getting along pretty good where I was. That friendly relation continued up to a very short  
289 time before this suit was commenced. I wrote them to the effect that I had commenced suit and referred them for anything further they desired to my attorneys, Curler and Martinson. In addition to my physical suffering, I suffered mental anguish or mental worry on account of my condition and worrying about my future, and what I would do in future for a living and things of that kind. They bore down rather heavily on me, those feelings.

Mr. CANNON—Q. Isn't it a fact, Mr. Sheaff, that the company offered to take that worry entirely from your [174] mind?

A. They offered me a job, on conditions.

290 Q. Only a job, on conditions?

A. They offered to pay my expense for six months if I would sign a release.

Q. Isn't it a fact, Mr. Sheaff, that the company offered to pay or assume all of your various liabilities for medical service and supplies, nursing, and hotel bills, which had been occasioned as a result of the accident—agreed to pay your reasonable expenses for board and lodging, until you were able to support yourself; and agreed to provide you with suitable



(Testimony of P. R. Sheaff.)

permanent employment, as soon as you were  
291 able to perform the duties thereof, and all they  
asked you to do was to release them from liability of a lawsuit?

A. I forgot all those things you mention there.

Q. Well, you were sent, weren't you, by Mr. Chatfield a form of release? A. Yes, later, I was.

Q. Well, not later than the early part of February, 1912?

A. No, but then he had shown me one before that time.

Q. You had previously had a talk with Mr. Chatfield about that, hadn't you?

A. We had talked over that; he said he would send me over a release.

292 Q. He would send you over a paper?

A. Yes.

Q. But you didn't get the paper right away, did you, and wrote Mr. Chatfield, asking him why he did not send you the paper?

A. I don't remember whether I wrote him or not.

Q. I call your attention to a letter dated Fallon, Nevada, January 31st, 1912, addressed to the Pacific Power Company at Bodie, purporting to be signed by yourself, is that your [175] signature? (Hands letter to witness.) A. Yes.

Q. Did you write that letter?

A. Yes, I guess I did—yes.

293 Q. Let me call your attention for the purpose of refreshing your recollection, to this part of it (indicating on letter). A. Yes.

(Testimony of P. R. Sheaff.)

Q. Now, after looking at that letter, is your memory refreshed as to whether or not you wrote the Pacific Power Company for the form of document which you were to sign with relation to your injuries and future employment?

A. Yes, I suppose that is what that refers to.

Q. That is what that refers to, is it? Then, as a matter of fact, you had been waiting and expecting to get the papers that you and Mr. Chatfield were talking about, had you?

294 A. Well, I had been expecting them.

Q. And had been waiting for them, as you say in your letter? A. Yes.

Q. Now, you did receive a form of release, didn't you? A. Yes.

Q. I show you what purports to be a carbon copy of the document sent to you for your signature, and ask you if you will examine it, and say whether that is a copy of the document sent you (hands paper to witness).

A. Yes, I think that is a copy of the document that was sent me.

295 Mr. CANNON.—We offer this in evidence, and are willing to substitute the original, if Judge Curler can find it.

Mr. CURLER.—I have, I am sure, the original document that was sent to Mr. Sheaff; I don't care which one is put in evidence, but I would like to compare them before this is introduced.

Mr. CANNON.—Suppose you find it now, I would rather [176] get the original in myself.

Mr. CANNON.—If your Honor please, the docu-

(Testimony of P. R. Sheaff.)

ment I showed the witness just before recess is admitted by counsel for the plaintiff to be a true  
296 and correct copy of the document sent to Mr. Sheaff for his signature, and I offer it in evidence.

Mr. CURLER.—No objection.

The COURT.—It will be admitted.

(The document is marked Defendant's Exhibit "I," and read to the jury:)

**[Defendant's Exhibit "I"—Release.]**

“KNOW ALL MEN BY THESE PRESENTS:

That for and in consideration of the Pacific Power Company, a California corporation, agreeing to pay and assuming the various liabilities for medical services and supplies, nursing and hotel bills which have been occasioned as a result of an accident which  
297 occurred to me at the Fairview substation of the aforesaid company; and further agreeing to pay my reasonable expenses for board and lodging until I am able to support myself, and furthermore agreeing to provide me with suitable permanent employment as soon as I am able to perform the duties thereof; I, P. R. Sheaff, of the County of Churchill, State of Nevada, have released and forever discharged, and by these presents do release and discharge the said Pacific Power Company, its successors and assigns, of and from all and all manner of actions, causes of actions, suits, debts, dues, sums of money, accounts, controversies, agreements, promises, damages and demands whatsoever  
298 in law or in equity which, as against the said Pacific Power Company, I ever had or now



(Testimony of P. R. Sheaff.)

have or which I or my executors or administrators hereafter can, shall or may have for or upon or by reason of any matter, cause of thing whatsoever from the beginning of the world to the date of these presents; [177] and more particularly of and from any claim that I may have arising out of a certain accident that happened to me while being in the employment of the said Pacific Power Company, at Fairview, Nevada, on or about the 18th day of July, 1911.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this — day of February, 1912.

—————(Seal)

Signed, sealed and delivered in the presence of.”

Mr. CANNON.—Q. Did you sign that document, Mr. Sheaff? A. No, sir.

WITNESS.—(Continuing.) I don't remember just what was said in our conversation, and I can't say whether that document was drawn in accordance with our conversation or not. After receiving that document I don't remember making any demands or counter-demands upon the Pacific Power Company. I did not demand of them any specific sum of money.

I did not threaten them with any suit. I don't remember if I advised them that I would bring suit against them unless they would do certain things for me. My relations clear up to that, and after this time, were always friendly. Friendly letters ending with “Best wishes,” and “I remain yours sincerely,” and “Give my regards to” so-and-

(Testimony of P. R. Sheaff.)

so and so-and-so, couched in ordinary phraseology like that passed back and forth between us.

Mr. CANNON.—Q. I show you a letter, Mr. Sheaff, dated Fallon, Nevada, January 1st, 1911, addressed to the Pacific Power Company, 301 Bodie, Cal., and purporting to be signed by you; is this in your handwriting? (Hands letter to witness.) A. Yes.

Q. And signed by you. I show you a similar letter, dated December 1st, 1911, purporting to be signed by you, addressed to the Pacific Power Company; was that letter written by you? (Hands letter to witness.) [178] A. Yes.

Q. This date, January 1st, 1911, must be 1912, must it not? It is printed 1911; it was following your accident, wasn't it?

302 A. I presume that was supposed to be 1912.

Mr. CANNON.—We offer both of these letters in evidence.

(The letters are admitted in evidence, marked Defendant's Exhibits "K" and "L," and read to the jury.)

**[Defendant's Exhibit "K"—Letter, December 1, 1911, Sheaff to Pacific Power Co.]**

"Fallon, Nevada, Dec'r 1st, 1911.

Pacific Power Co., Bodie, Cal.

Dear Mr. Chatfield:—

Am enclosing my hotel bill for Nov'r, and will see that the Drug Co. sends in their bill for Oct. and Nov.

I am able to get around the house on my crutches now, and am doing nicely.

(Testimony of P. R. Sheaff.)

Mr. Justice was disappointed at not getting  
303 his money. I am not able to pay him, so I do  
hope you will send him his check.

Yours sincerely,

PERCY R. SHEAFF."

[Defendant's Exhibit "L"—Letter, January 1, 1911,  
(1912), Sheaff to Pacific Power Co.]

"Fallon, Nevada, Jan. 1st, 1911.

(1912).

Pacific Power Co.,

Bodie, Calif.,

Dear Mr. Chatfield:

Enclosed please find the Hotel account for Decr.  
I am glad to say I'm getting along fine, and was up  
town on crutches on Wednesday for the first time.

Have been up town several times since, and its fine  
to get out in the open and exercise. I bought a big  
pair of rubbers, so I'm fixed for footwear. [179]

I had a good Christmas, under the circum-  
304 stances, and hope you all did, and hope you  
have a prosperous New Year.

Yours sincerely,

PERCY R. SHEAFF."

WITNESS.—(Continuing.) I think the corre-  
spondence between me and Mr. Chatfield and the  
Pacific Power Company was practically all of the  
same tenor as the letters read. After I received the  
release I wrote to the Pacific Power Company.  
That is the letter I wrote. (Witness refers to letter  
handed him by Mr. Cannon.) Between the time I



(Testimony of P. R. Sheaff.)

received that release and the time I wrote that letter,  
I referred the release to my counsel.

305 Mr. CANNON.—We offer this letter in evidence.

(Letter admitted in evidence, marked Defendant's Exhibit "M," and read to the jury.)

**[Defendant's Exhibit "M"—Letter, February 13, 1912, Sheaff to Pacific Power Co.]**

"Fallon, Nevada, Feby. 13, 1912.

Pacific Power Co.,

Bodie, Cal.

Dear Mr. Chatfield:

Yours of Feb. 10th to hand yesterday, and in reply will state that after considering the release which you sent to me, I have concluded not to sign it.

Yours truly,

PERCY R. SHEAFF."

Mr. CANNON.—Q. Did you ever give the company any other reason than the one contained in that letter as to why you did not sign that release?

A. I don't remember of giving them any  
306 other reason.

Q. Is it not a fact, Mr. Sheaff, that during the time you were in correspondence with the Pacific Power Company, and accepting money from them, and having your bills paid by them to the extent of a thousand dollars or so, that you already [180] had a lawyer employed, ready to commence suit against them in case they offered you a release to sign?

A. Not necessarily in that specific event.

(Testimony of P. R. Sheaff.)

Q. Is it not a fact that you had a lawyer employed to commence suit against the Pacific Power  
307 Company, before you received that check dated July 31st, 1911,—the last check for your services?     A. No.

Q. When you received that check you turned it over to Mr. Curler, did you not, for his advice?

A. Not immediately I don't think.

Q. You turned it over to him before you cashed it, didn't you?     A. Yes.

Q. There are two checks dated July 31st, one for \$23.00, the other for \$57.15; both are stamped  
308 "Paid, Oct. 4, 1911"; it was before October 4th, 1911, that you employed Mr. Curler to represent you, wasn't it?     A. It was.

Q. How long before?

A. I don't remember just how long.

Q. At any rate, when you did employ Mr. Curler, you employed him for the purpose of representing you in proceedings you expected to bring against the Pacific Power Company, didn't you?     A. Yes.

Q. And having that intention in mind, and having a lawyer employed for that purpose, you continued to receive money from the company, and continued to correspond in a friendly way with the company, clear up to the time you commenced your suit,  
309 did you?

A. I corresponded with them. [181]

Q. Well, in the way indicated by the letters?

A. Yes.

Q. And you continued to receive money from them,

(Testimony of P. R. Sheaff.)

and to correspond with them while you had a lawyer engaged to commence suit against them?     A. No.

Q. You did not?

A. No, I did not receive money from them.

Q. And you requested them to pay bills after you had employed Mr. Curler to represent you in the suit that you were to commence, didn't you?

A. Yes.

Q. And you continued to accept money from  
310     them after that, didn't you?     A. No.

Q. Didn't you? You received money from them after the 4th of October, didn't you?

A. No.

Q. No?     A. No.

Q. Then you did receive money from the Pacific Power Company in 1912, didn't you?

A. No, I received a check for Mr. Osborne.

Q. He was the hotel-keeper, and that was for your board at the hotel, wasn't it?     A. Yes.

Q. Now, you received checks also in November, didn't you?

A. I don't just remember, I probably did.

Q. At the date of that letter, November 6th,  
311     1911—when you received that letter you received enclosed with it, certain checks, didn't you? [182]     A. Yes.

Q. And those checks were for some of your expenses, too, were they not?     A. Yes.

Q. So that it is a fact after you employed Judge Curler to represent you and to commence proceedings against the Pacific Power Company, you con-



(Testimony of P. R. Sheaff.)

tinued to receive money from the Pacific Power Company?     A. They continued to pay my bills.

Q. Well, you continued to receive checks and to use checks in the payment of your bills.

A. The checks were not made payable to me.

312     Q. Well, you continued to use them in the payment of your bills, didn't you?     A. Yes.

Redirect Examination by Mr. GEDNEY.

Some of the officials came to see me while I was at Fallon after the accident. Mr. Chatfield came there twice; the first time was about the 20th of September, 1911. I had a conversation with Mr. Chatfield at that time. We talked there for several hours and we spoke of different things, and among others the payment of my expenses. He  
313     would not promise to pay them. My expenses had not been paid up to that time. I didn't have any agreement with them as to my expenses. I think Dr. Gardner had an agreement with the company. I don't know of my own knowledge what that agreement was. I saw a telegram from the power company a few weeks after my accident. Doctor Gardner showed it to me while I was in bed. Mr. Justice was attending me as nurse. I do not know whether there was a contract between the Pacific Power Company and Mr. Justice as to his being paid by the Pacific Power Company. The  
314     hotel-keeper told me that the Pacific Power Company had agreed to pay my bills at the hotel. [183] Mr. Chatfield had conversation with me about those matters both times he was over to see

(Testimony of P. R. Sheaff.)

me. At that time he discussed my hotel bills and doctor bill and nurse bill. The second time he was over he said he would pay the bills. I don't remember the conversation that was had in regard to those bills. The substance of the conversation was that he would pay the bills. I can't remember  
315 that he said anything more. As I received these bills from the hotel-man and the nurse, I sent them to the power company for them to pay them. There had been an agreement or understanding between myself and the Pacific Power Company concerning the sending of the bills to them. That was an unwritten understanding, your Honor, with Mr. Chatfield and me. I can't remember the conversation, that is, not the words of it. He told me to send the bills over to him, and that was the impression I got from the talk with him. I can't recollect any more of the conversation or the  
316 substance of it. He told me that the second time he was over there; that was about the 10th of October, 1911. I did thereafter send the bills to him. The Pacific Power Company paid those bills up to a certain time. They paid part of the drug bill and they paid my board and hotel bill and they paid the nurse some money on account and the doctor some money on account, and I think they were the only bills that were sent them. I sent the balance of the nurse's bill, but I don't remember whether I sent the balance of the doctor's bill  
317 or not. When I sent in the balance of the nurse's bill it was just about the time he quit

(Testimony of P. R. Sheaff.)

me. Mr. Chatfield was there and talked with me about the release. To the best of my recollection, he said that he would send me over a form of release, and I said "All right, send it over, and I will give it consideration." I don't think Mr. Chatfield and I talked over the terms of the release, not [184]

fully. He told me he would put a clause in  
318 it, so that they would pay all of the bills and give me a job, if I would sign it, and all of those

words that are there, I don't think we talked about it in detail. I don't know who drew this release; I had nothing to do with drawing it. There was no agreement at any time, or any understanding as to what the job for life would be if I signed this release.

There was no understanding or agreement what the wages or salary would be for this life job, if I signed this release. The company never offered to

319 sign this release. There was no understanding that if I signed this release the company

should sign it. There was no offer by the company to pay me a stated or certain amount for my injuries.

After I refused to sign this release, the company did not make any other offer. I don't remember if they offered to amend this release or change it in

any form. After that time they paid none of my bills. After that time they sent no checks to me for any of my expenses. I had employed Judge Curler as my attorney under a definite agreement to bring

suit. There was an oral understanding be-  
320 tween myself and Judge Curler in regard to this matter when I employed him. That was



(Testimony of P. R. Sheaff.)

a few weeks after the accident. I asked Judge Curler to look out for my interests, told him I was injured, and I told him to take whatever proceedings he thought was necessary, and I would act under his advice. I don't know whether the company knew that I had employed Judge Curler.

Mr. GEDNEY.—I would state that the file-mark upon the complaint shows that it was filed the 10th day of April, 1912.

321 WITNESS.—(Continuing.) The balance of the nurse's and doctor's bills have not been paid by the Pacific Power Company. Proceedings have been had to collect it. (Counsel hands witness a letter.) I saw this letter before in Fallon. The signature [185] on there is that of W. N. Chatfield. Prior to this time, I received that letter from Mr. Chatfield.

Mr. GEDNEY.—We offer this letter in evidence.

(Letter admitted in evidence, marked Plaintiff's Exhibit No. 1, and read to the jury.)

**[Plaintiff's Exhibit No. 1,—Letter, April 1, 1912,  
Chatfield to Sheaff.]**

**“HYDRO-ELECTRIC COMPANY.**

**Bodie, California, April 1st, 1912.**

Mr. P. R. Sheaff,  
Fallon, Nev.

Dear Mr. Sheaff:—

322 I have been hoping to hear from you for some time, but have been disappointed. How are you getting along. By this time, I presume that you can get around quite well.

(Testimony of P. R. Sheaff.)

I hope that you reconsidered in regard to the signing of the release, for until this is done, I cannot settle your bills, as I told you last January. I really do not understand why you should hesitate to sign, for I made it up on the lines we were talking over, and I thought everything was satisfactory to  
323 you. Mr. Green has sent your board bills and I hardly know what to do about them until I hear from you, and he is evidently anxious for money.

We have certainly had a marvelous winter here this year. Hardly any snow at all here in Bodie and very little up in the mountains. As you probably know, we have not been able to supply Fairview and Wonder with power for the mills since the middle of January. We expect that there will be a run-off in a few days now, and expect to let them  
324 put on their loads about the 15th. Dan Watson, who you knew in Bishop, I believe, said some time ago that he had a job for you running a derrick engine, [186] whenever you wanted it. Forgot to mention that he has a contract on our new dam at Lundy, and is working on it now.

Hoping to hear from you in a few days, I am,

Yours truly,

W. N. CHATFIELD."

WITNESS.—(Continuing.) The motor at Millers stood about that high (indicating); one of them did.

One was about two feet and a half, and the  
325 other about three feet high. At no time did I ever have anything to do with these motors

(Testimony of P. R. Sheaff.)

other than turning the switch. No one at Millers at any time instructed me or warned me to keep away from the wires. There were some exposed wires outside at Millers that you could see. There were none in where I was working. There were no exposed wires about the switch-board at Millers that I know of. The timbers that were used in this Fairview lightning-arrester before I bored the holes in them, were out on this north side of where the  
326 arrester is now. None of it was put in shape at that time. After I finished boring the holes, I was not around that lightning-arrester at all up to the day of the injury. I had something to do with the upright poles which formed the switch, and the switch itself that stands just outside of the lightning-arrester. When they put it up, they put the switch on the poles on the ground, and I helped to bolt it on, and helped to raise it. I did not have any-  
327 thing to do with stringing the wires to or over the switch. That was done before the lightning-arrester was put up there. That day I went over from Wonder to Fairview, and after going up to the mine and ordering the clamps, I went down to the substation and went in and got a pick and shovel, and then went directly from there around to where I went to work at the lightning-arrester. It was an ordinary pick and shovel. I don't remember during the time [187] that I was there working with the pick and shovel striking any part of the lightning-arrester. No one had said anything to me



(Testimony of P. R. Sheaff.)

about not striking it. I was working right  
328 underneath the lightning-arrester, that is,  
underneath the arm over the last hole. I  
suppose I was standing about four feet from what  
at that time was the live side of that lightning-ar-  
rester. I think the shovel handle was about five  
feet long; the pick-handle about three feet. The  
handles were made of wood. At that time, I didn't  
know whether or not if I came in contact with the  
arms of that lightning-arrester nearest the building  
that I would receive a shock of electricity.  
329 Assuming that the horns or pipes nearest the  
building were connected at the top end with  
the high-power wires, I didn't at that time know  
whether or not I would receive a shock if I came in  
contact with the lower end of those pipes. I know  
it now. I didn't know it at that time because of my  
ignorance of the matter, and then I thought these  
blocks were not connected on this side—these cement  
blocks on this side; and not only that, it was a clear  
day and there were no storms. I must have received  
information in regard to that lightning being on  
there at the time of storms. My understand-  
330 ing was that they would be charged when there  
was an electric storm. My understanding was  
that there was no charge in any of the arms when  
there was not any storm. In considering whether  
they were charged or not, I didn't make any differ-  
ence as between the back arms and the front arms. I  
didn't know at that time that if a person came in  
contact with the lower part of the arm that was con-

(Testimony of P. R. Sheaff.)

nected to the high tension wire that that person would receive a shock. I know it now.

331 Mr. GEDNEY.—Q. Now, what have you learned since that time which informed you of that fact? [188]

Mr. CANNON.—Object to that as immaterial, and is hearsay.

The COURT.—I will allow that question.

A. Well, I have been told by electricians that I could get—that anybody would get a shock there.

Mr. CANNON.—Move to strike out the answer as hearsay, and incompetent, irrelevant and immaterial.

The COURT.—I think I will allow that to stand. That is not a fact in the case; it is merely going to show his knowledge, and when he has acquired knowledge with reference to the action of electricity.

332 Mr. CANNON.—Your Honor will allow us an exception to both rulings, the ruling on the question, and on the motion to strike out the answer.

The COURT.—You may have the exception.

To the action of the Court in thus ruling on the question and on the motion to strike out the answer are here assigned as

### **Error No. 1.**

WITNESS.—(Continuing.) At that time I did not have any knowledge as to electricity going through a man or a person from a wire to the ground.

Mr. GEDNEY.—Q. Now, you were shown  
333 several checks by the counsel for the defense, and they were identified and admitted in evidence, and some of those checks showed a four dollar

(Testimony of P. R. Sheaff.)

a day payment and some checks, four and a half a day; will you explain what time you received the pay upon the four and a half basis?

A. As near as I can tell, it was when I did work in the line, climbing the poles and stringing the wires.

WITNESS.—(Continuing.) I did not have any agreement with the company that I should receive four and a half a day for part [189] of the  
334 time and four dollars for the other time. At the time I was working there I did not know what linemen's wages were. Ordinary laborers' wages were four dollars a day. The company did not pay me any wages from July 18th to July 31st. That "to and including July 31st, 1911," is not Mr. Halpenny's handwriting. I did not put that on that check, and this other check marked "Exhibit 'G'" has the same statement; I did not receive pay upon that check up to July 31st. I cashed that check upon the advice of Judge Curler. Mr. Halpenny  
335 never instructed me in regard to the danger of electricity. Mr. Halpenny was a very quiet man. In regard to his business, I had quite a few conversations with him—none in regard to electricity. We talked about ships and mountains and lots of other subjects. He at no time gave me any instructions upon electricity. There is no difference in the wire between a high tension and a low tension wire. It would be a difference in the amount of power on the wire. I guess I knew that the  
336 wires that ran into the substation at Fairview were high tension wires. I don't know how I



(Testimony of P. R. Sheaff.)

knew it. I had never made any test. There was nothing about the appearance to indicate to me whether they were high or low tension wires. I never saw anyone make any test on those wires. There was no danger sign at Wonder upon the lightning-arrester. The lightning-arrester at Fairview had a different appearance altogether from the Wonder lightning-arrester; it was built on four big, tall posts. It was not set up against the building  
337 at Wonder the same as this one is at Fairview.

With regard to the building, it was set off to this side, I suppose between the corner of the building and the corner pole nearest the building. It was about ten feet or thereabouts. The arms of that arrester did not connect with the building at all that I know of. Another difference was that there were blocks in there—cement [190] blocks and the wires were connected from the arms to the blocks. Another difference—it was higher. Those arms that stick out horizontally, and the insulators that the arms rested on were higher. The arms on the  
338 Wonder arrester were about two feet higher than on the Fairview arrester. Those arms were within my reach standing upon the ground. The height of those arms from the ground on the Wonder arrester were about eight feet to the best of my knowledge, about two and a half feet higher than on the arrester at Fairview. I don't know if there was a danger sign on the switch at Fairview. If there had been a danger sign on the outside of the

(Testimony of P. R. Sheaff.)

post which forms a part of the switch, I would  
339 not have seen it. If it had been on either  
one of those posts I would not have seen it  
from this side. Presuming it was on the switch  
posts and that the sign was fastened, or readable, on  
the side away from the building, I could not have  
seen it. I didn't see any other signs on there. I  
came to have that picture that Mr. Cannon referred  
to where I was standing upon a pole in this way. I  
borrowed a kodak and took a few pictures up around  
the mill, and places, and I think that was the last  
day I was there; we had got about all the work  
340 done up; and then I went outside and Mr.  
Halpenny took the picture; I climbed up on  
the pole and he took the picture. I climbed up with  
Mr. Halpenny's climbing irons. I got them from  
him. I got this belt I have around my waist there  
from Mr. Halpenny. I did not have any of those  
articles, either a belt or climbers of my own. I never  
at any time owned a set. That is a fair picture as  
I appeared at that time.

Mr. GEDNEY.—Q. Mr. Sheaff, yesterday  
341 on cross-examination you were asked in going  
from the place where you dug the last hole,  
toward the building, if you wandered over to the  
point where you were hurt; now how did you go in  
going [191] from that hole to the building?

Mr. CANNON.—Object to that; it assumes that he  
went to the building.

Mr. GEDNEY.—I will change that, "toward the  
building."

(Testimony of P. R. Sheaff.)

A. I expected—started to walk towards the building.

Q. Did you wander?      A. Why, no.

WITNESS.—(Continuing.) All the time that I worked in Wonder I used Mr. Halpenny's climbers.

In Fairview, I sometimes used Mr. Johnson's  
342 and sometimes Mr. Halpenny's climbers. I

had never seen any men work on live wires when I knew those wires were alive. I never worked on a live wire. Mr. Chatfield gave me fifty dollars when he came over to visit me at Fallon, the first time I ever saw him—about the 20th or 25th of September, 1911. It was a check on the John S. Cook Bank, at Goldfield, Nevada, signed W. N. Chatfield. It was a private check of Mr. Chatfield. Before that time

I had never seen Mr. Chatfield. I first had a  
343 conversation with Mr. Chatfield regarding a release the first time I ever saw him. I was lying in bed and Mr. Chatfield was sitting alongside of the bed, and he showed me a paper written out in a memorandum-book and stated that Mr. Poole had asked him to see if he could get me to sign this paper, and I read the paper through, and it stated if I would—

Mr. CANNON.—Just a moment, you were asked to state the conversation; I don't think it is proper to state the contents of the paper in answer to that question.

344 Mr. GEDNEY.—Q. State the contents of that paper.



(Testimony of P. R. Sheaff.)

Mr. CANNON.—That is objected to on the ground it is immaterial.

The COURT.—Where is the paper. [192]

Mr. CURLER.—We haven't the paper.

The COURT.—Well, the paper is the best evidence; and you should show you haven't it before you introduce the contents.

Mr. GEDNEY.—The objection had not been made on that point; I can go into that; I was trying to get through quickly.

Q. Have you that paper? A. No.

Q. Who had it at the time you saw it?

A. Mr. Chatfield.

345 Q. Have you ever seen it since that time?

A. No.

Q. Do you know where it is now?

A. I could not say, I don't know.

Mr. CURLER.—Mr. Cannon, have you that paper?

Mr. CANNON.—I don't know whether I have or not. I don't think I have any paper of the date of September.

Mr. GEDNEY.—Q. Describe what kind of a paper that was.

A. Oh, I should say it was about four inches wide, and five inches long; it was in a memorandum-book.

Q. State whether or not, it was one of the  
346 leaves of the memorandum-book, or was a separate paper.

A. It was a leaf of the memorandum-book.

Q. Now state the substance of that writing as near

(Testimony of P. R. Sheaff.)

as you can state it.

Mr. CANNON.—We object on the ground it is incompetent, irrelevant and immaterial, and no foundation laid for the question. I am simply making this objection to cut short this record, in view of the suggestion of the Court.

The COURT.—I will allow you to ask the question, but I don't see that it makes a great deal of difference.

To which ruling defendant then and there  
347 excepted [193] and said exception being  
allowed is here designated

### **Error No. 2.**

A. The paper stated that if I would sign it and release the Pacific Power Company from all obligations, that they would pay my expenses for six months from the date of my injury, and would also pay me half wages for six months.

WITNESS.—(Continuing.) I did not sign it. I told Mr. Chatfield that I would not sign it and he says "Neither would I, and I don't blame you." About that time he got ready to go away. It was  
nearly train time. That was after he gave me  
348 this fifty dollars. It was the same day. (Mr.  
Gedney hands witness four letters.) Those  
signatures are Mr. Chatfield's. I received these  
papers through the mail.

Mr. GEDNEY.—We offer them in evidence.

Mr. CANNON.—No objection to these letters going in, providing the following letter by Mr. Chatfield

(Testimony of P. R. Sheaff.)

goes in as a part of the offer; the letter of February 14th, from Mr. Chatfield also.

Mr. GEDNEY.—We have no objection, if they wish to introduce that letter.

Mr. CANNON.—All right.

Mr. GEDNEY.—We are offering these letters.

(The four letters are admitted in evidence,  
349 marked Plaintiff's Exhibit No. 2, and read to the jury.)

**[Plaintiff's Exhibit No. 2—4 Letters, Chatfield to Sheaff.]**

**“THE HOTEL GOLDEN.**

Reno, Nevada, 9 P. M.

Jan. 12—1912.

Dear Mr. Sheaff:

I am sorry to say that those papers I expected to find here for me, did not show up, and I think that by mistake they were sent to Bodie direct. I am leaving for there tonight and will send them to you at once when I get there. [194]

Am sure that you will be satisfied and know that you will make no mistake in signing, and as  
350 soon as you do, then I can go ahead and make those payments.

Yours very truly,

W. N. CHATFIELD.”



(Testimony of P. R. Sheaff.)

“HYDRO-ELECTRIC COMPANY.

Bodie, California.

Jan. 14th, 1912.

Mr. P. R. Sheaff,  
Fallon, Nev.

Dear Mr. Sheaff:

Arrived back here last night and found Mr. Osborn's bill here and am sending with this letter a check for him, which please deliver and have him send a receipt for same.

Did not find those papers here as I expected, and presume that they did not get to Reno until last night and as I told the people to forward them,  
351 I will probably get them tomorrow. Will send them on to you as soon as they get here.

The weather here is fine and warm, and what snow we had will soon be gone. We are up against it for water, and may have to close down our plant entirely if matters don't change mighty soon.

Yours truly,

W. N. CHATFIELD.”

“PACIFIC POWER COMPANY.

Bodie, California.

February 4th, 1912. [195]

P. R. Sheaff,  
Fallon, Nev.

Dear Mr. Sheaff:

As I wrote to you last night, I am sending you herewith the release, and I think that you will  
351 find it just as I said it would be. If there are any questions that you would like to ask, I will

(Testimony of P. R. Sheaff.)

do the best I can to answer them, but I think that everything is perfectly clear.

Now if you will sign this and return to me, I will endeavor to settle those bills just as soon as I possibly can.

Also will send you your traveling expenses to the one of those places that you mentioned that you would like to go, just as soon as you want to go.

Hope that you are still improving, and wish  
352 that it was so that I could drop in to see you.

Will be looking for a letter from you in a few days.

Am sending herewith a check for Mr. Osborne for January account.

Yours very truly,

W. N. CHATFIELD.

If you wish will send you a duplicate copy for you to keep."

"PACIFIC POWER COMPANY.

Bodie, California.

Feb. 10th, 1912.

Mr. P. R. Sheaff,  
Fallon, Nev.

Dear Mr. Sheaff:

On the 4th I sent you the release but have not heard from you since. Did you receive it all  
353 right? As [196] I have not heard from you, thought I had better write as it might be

(Testimony of P. R. Sheaff.)

lost in the mail, either going to you, or being returned here.

Hoping to hear from you soon, I am,

Yours truly,

W. N. CHATFIELD."

WITNESS.—(Continuing.) The paper referred to in the letter of January 12th, was the release he was going to send me to sign. (Mr. Gedney hands the witness five other papers.) I received these through the mail at Fallon, all except one. They are signed by C. O. Poole. Prior to receiving these

354 letters, I had met Mr. Poole once in Hawthorne. I know that Mr. Poole was connected with the company for Mr. Chatfield told me so.

(The letters were thereupon admitted in evidence, marked Plaintiff's Exhibit 3 and read to the jury, and were as follows:)

**[Plaintiff's Exhibit 3—6 Letters, Poole to Sheaff.]**

**"PACIFIC POWER COMPANY.**

Bodie, California.

September 7th, 1911.

Mr. P. R. Sheaff,

Fallon, Nevada.

My dear Sheaff:

I have your telegram of the 7th advising me that you are getting along as well as could be expected and that the progress is slow. This, of course, is quite natural as all electric burns, as you  
355 know, are very slow to heal but usually come out all right with proper care.



(Testimony of P. R. Sheaff.)

I have been away from this section of the country nearly all summer, as you probably know, having business in the east and on my return here a few days ago, was very sorry indeed to learn that you had met with an accident and immediately wired you to learn your condition. I [197] had hoped to make time this trip to go over and see you, but I find that important work takes me to Bishop and from there

will have to return to San Francisco and then  
356 to Los Angeles, so that it will be three weeks or so until I can return to this section, but at that time hope to have a chance to see you. In the meantime, I hope you will not worry too much and know that I have you in mind all the time.

Mr. Chatfield will probably have an opportunity to come over and see you sometime very soon and will do everything he can to make you comfortable, I am satisfied.

You might be interested in knowing that we have just closed up contracts for line material to  
357 make a tower line extension 240 miles from Bishop down to San Bernardino, and material will be on the way inside of the next 30 days. This, together with some other power plants that we have in mind, will keep us busy for some time to come and hope that you will be able to get around and take part in some of the work before very long.

You must not become too impatient because, as before stated, it takes time for these burns to heal

(Testimony of P. R. Sheaff.)

and even after you are up it will be sometime  
358 before you will be able to go to work, but I  
feel confident that you will come out all right.  
My brother-in-law had an accident very similar to  
yours several months ago and was laid up for sev-  
eral months, losing a couple of fingers, and, I be-  
lieve, one or two of his toes, but he came out all right  
and is now out on his work practically as good as  
ever.

If you are able to write, won't you please write to  
me at my address as per enclosed card, Los Angeles,  
where I expect to be within the next week or  
359 so, and let me know if there is anything that  
I can do for you and whether you have proper  
care and treatment in your present location. [198]

With kindest regards, I wish to remain,

Yours very truly,

C. O. POOLE."

Los Angeles, California, September 29, 1911.

Mr. Perry R. Sheaff,

Fallon, Nevada.

My dear Sheaff:

You will doubtless think I am a poor correspon-  
dent having delayed so long in answering your letter  
of the 13th inst. but I have been away from the office  
for several weeks and this is the first opportunity I  
have had to read your letter.

360 I am glad to know that you are progressing  
favorably and sincerely hope that you will  
soon be able to get around again. I was disap-  
pointed in not having a chance to run over and see

(Testimony of P. R. Sheaff.)

you when I was in Nevada last, but urgent work would not permit it at that time.

I have sent the bills to Mr. Chatfield at Bodie and told him to take the matter up and make some satisfactory arrangements with you.

I am wondering if you would like to come down to Los Angeles where we can see you frequently and possibly the pleasant climate here would help you to regain your strength quicker than on the desert. Mr. Chatfield will call and see you again very soon on this subject and personally I would like very much to see you come down here where you can get the best of attendance and as before stated, the climate will permit you to be out doors as much as you like.

I expect to be in this locality now for the next ten days and would like very much indeed if you can write me and tell me how you feel about coming down. I want [199] you to know that I have not forgotten you, and I will do everything I can to help you on your feet again.

With kindest regards, wish to remain,

Yours very truly,

MANIFOLD & POOLE,

By C. O. POOLE."

"Los Angeles, California, December 30, 1911.

Mr. P. R. Sheaff,

Fallon, Nevada.

My dear Mr. Sheaff:

It seems to me as though the fates were against me in coming over to see you. I had made several



(Testimony of P. R. Sheaff.)

plans to do so but something always took me in the other direction.

I hear from you, however, through Mr. Chat-  
363 field and I am very glad indeed to know that  
you are getting along as well as you are. I  
know that you must feel discouraged in your recovery but as I wrote you before, such wounds are slow to heal and it requires the utmost patience to pull a person through under the conditions that you have had to labor with. I feel confident, however, that you will come out all right ultimately and am led to believe so more particularly on account of Mr. Granquist's recovery.

You will remember that Mr. Granquist, the carpenter at Plant 4 on Bishop Creek was very  
364 severely burned and for a time they thought  
he would lose one of his feet, but he has fully recovered and has been working for the past year. You must therefore not get discouraged but put on a bold front and stay with the game and I am sure that everything will come out all right in the end.

Mr. Chatfield will hand you this letter and he is going to see you in connection with your affairs in  
[200] Fallon. He will talk the whole situation over with you and I am going to ask you as a  
365 personal favor, to very carefully consider  
what he has to say. We want you to know that we are going to do everything for you that we can and want you to be fully satisfied that we will take care of you in the best way possible and just as soon as you are able to get around, we will find a

(Testimony of P. R. Sheaff.)

permanent place for you in one of our substations where there will not be very much running around to do.

I sincerely hope that you and Mr. Chatfield will come to a satisfactory understanding while he  
366 is there this trip and hope that I will have the pleasure of seeing you in the near future.

With kindest regards, I wish to remain

Yours very truly,

C. O. POOLE.”

“Los Angeles, Cal., March 22, 1912.

Mr. Perry R. Sheaff,

Fallon, Nevada.

Mr dear Sheaff:

I have not heard from you for a long time and am quite anxious to know how you are getting along.

I have been in hopes of shaping my trip so that I might see you, but it seems almost impossible for me to take the time to go that way. Won't  
367 you please write and tell me just how you are and if your feet are getting so that you can use them. We are doing a great many things down in this part of the country and are also preparing for considerable work up in the hills. I should like to know when you expect to be able to do some work so that I can keep something that will suit you. Would be glad if you will indicate about what class of work you think you will be able [201] to take care of and approximately about when we might expect you.

368 Some time ago you will remember I made a suggestion to you that you come down to Los

(Testimony of P. R. Sheaff.)

Angeles where we could see you and be of some assistance in your recovery. Would like to know now if you cannot make arrangements to come down here and spend a little time while you are convalescing and then we can talk over the question of your going to work and what class of work you would like, etc.

I sincerely hope that your wounds are healing and that you will have the use of both of your limbs without seriously impairing them.

369 With kindest regards, wish to remain,

Yours very truly,

MANIFOLD & POOLE,

By C. O. POOLE."

"Los Angeles, Cal., April 13, 1912.

Mr. Perry R. Sheaff,

Fallon, Nevada.

My dear Mr. Sheaff:—

A couple of weeks ago I wrote you and expected to have a reply before this time.

Will you kindly let me know at once whether or not you will be able to come down here so that I can talk over matters with you, and if you cannot come here will you be able to meet me at Reno in  
370 about a week's time when I expect to go through to Bodie? If you can do this I would appreciate it as I would like to see you anyway. We can then decide what would be best for you to do.

As before stated, we are putting in a large steam plant in San Bernardino and can find a place there that [202] I am sure would be satisfactory to you if you care to come down in this country.



(Testimony of P. R. Sheaff.)

If you can arrange to meet me at Reno as suggested, please let me know at once and I will  
371 wire you a day in advance of my coming, to enable you to reach Reno by the time I arrive there.

With kindest regards and hoping that I may see you soon, wish to remain,

Yours very truly,

MANIFOLD & POOLE,

By C. O. POOLE."

WITNESS.—(Continuing.) Those are all the letters that I received from Mr. Poole. Nothing was ever said to me about going to Los Angeles, California, except what was contained in those letters. I did not meet Mr. Poole in Reno. I wrote this letter to Mr. Poole on the day it was dated.

Mr. GEDNEY.—We offer it.

Mr. CANNON.—No objection.

372 (Letter admitted in evidence as part of Plaintiff's Exhibit No. 3, and read to the jury.)

"Fallon, Nevada, April 15, 1912.

Mr. C. O. Poole,  
Los Angeles.

Dear Sir:—

Yours of the 13th inst. to hand, and in reply will say that I have filed suit against the Pacific Power Co., and my case is in the hands of Curler and Mar-

(Testimony of P. R. Sheaff.)

tinson, of Reno, and therefore I must refer you to the above-mentioned firm.

Yours truly,

P. R. SHEAFF." [203]

Recross-examination by Mr. CANNON.

WITNESS.—(Continuing.) I have seen  
373 Mr. Gileece of Fallon. I don't think he was at the Overland Hotel at Fallon when I was injured. I think Mr. Gileece was one of the men that went with me to Fallon. I don't think he showed me a telegram that he received from the Pacific Power Company within a day or so after I was injured. I think there was a telegram giving him directions as to me and my care. I don't remember that I saw it or had it read to me. I think I did see such a telegram in the possession of Doctor Gardner about that time.

374 Mr. CANNON.—Q. I call your attention to this, which purports to be a copy of it, and ask you to read that right there, and see if it refreshes your recollection as to that telegram (hands paper to witness).

A. No, I don't remember seeing that telegram.

Q. You don't remember seeing that? A. No.

Mr. CANNON.—I will ask you, gentlemen, if you have a telegram reading that way, if you have I would like to have it (hands paper to counsel). Dated about July 18th, 1911, the day of Mr. Sheaff's injury.

375 Mr. CURLER.—We have not any such telegram. I cannot now remember if it is among

(Testimony of P. R. Sheaff.)

those papers, but we are getting those papers from Fallon, and if it is among them, I will produce it for you.

WITNESS.—(Continuing.) I received a telegram from Mr. Poole about that time. (Mr. Cannon hands paper to witness.) That looks like a correct copy of the telegram I received from Mr. Poole.

Mr. CANNON.—We offer this in evidence.

Mr. CURLER.—No objection.

(Telegram admitted in evidence, marked Defendant's Exhibit "O," and read to the jury.) [204]

**[Defendant's Exhibit "O"—Telegram—September 4, 1911, Poole to Sheaff.]**

"44 Paid Day Letter.

376 Bodie, California, September 4th, 1911.

To P. R. Sheaff,

c/o Grand Hotel, Fallon, Nevada.

Just arrived here and learned of your accident. Hope that you are getting along all right. Advise collect how you are and if you are getting good care; and if you are in need of anything. Expect to be over to see you soon.

C. O. POOLE."

(Charge Pacific Power Co.)

Mr. CANNON.—Will you let me have the original of Mr. Chatfield's letter, dated February 14th, 1912?

377 Mr. CURLER.—We admit, your Honor, please, that this is the original letter of which they have the copy. (Hands letter to counsel for defendant.)



(Testimony of P. R. Sheaff.)

Mr. CANNON.—A letter from Mr. Chatfield to Mr. Sheaff, dated February 14th, 1912, answering Mr. Sheaff's letter of the 13th, which was the letter in which he advised Mr. Chatfield that he would not sign the release.

The COURT.—I will allow the letter.

(The letter is marked Defendant's Exhibit "P," and read to the jury.)

**[Defendant's Exhibit "P"—Letter, February 14, 1912, Chatfield to Sheaff.]**

"PACIFIC POWER COMPANY,

Bodie, California.

Feb. 14th, 1912.

Mr. P. R. Sheaff,  
Fallon, Nevada.

Dear Mr. Sheaff:

Your letter of the 13th inst. received. It  
378 certainly surprised me very much, and in view  
of your giving no explanation, I cannot understand it. When I talked the matter over with you last month, I understood that everything was satisfactory to you, and I think that it should be. You [205] know, that there is hardly another company in the country that would have been as liberal to you in a matter in which they were in no way liable in any particular. However, this is a matter that it is up to you to decide as you think best.

Leaving all company matters aside, I per-  
379 sonally think that you will make the greatest  
mistake of your life by not accepting such a

proposition. Trusting your future for years to come in the hands of so-called 'friends' who, *you know*, have no interest or personal feelings toward you, except the dollars that they think might be made out of your misfortune, is, in my mind, too dangerous a proposition to tackle. I can truthfully say, that were conditions reversed—I would be only too glad to have my future assured and would lose no time in accepting it.

380 Hoping to hear from you soon, I am

Yours truly,

W. N. CHATFIELD."

WITNESS.—(Continuing.) I don't know as I made any effort to keep away from live wires without instructions while working in the Esmeralda power plant. I don't remember of coming in contact with any. I can't tell the width between those two long horizontal arms of the lightning-arrester—these timbers—two long parallel timbers; it would be approximately about six feet. Before leaving my work in going toward the substation, I didn't stop to examine the weather to see whether there was  
381 any danger of lightning. I didn't think about it at all at that time. I don't remember anybody telling me about the office of the lightning-arrester. I don't think anybody ever told me the difference between the live and dead sides of the lightning-arrester. I don't remember where I got this understanding that the *lightning* [206] was only for lightning. I did not take any means to

(Testimony of P. R. Sheaff.)

inquire while that contrivance was being erected, about whether my understanding was correct or incorrect. I don't remember asking anything about *that* the lightning-arrester was for and how it worked, I could have seen its construction if  
382 I had been around there and if I had noticed it, I suppose. I didn't say to Mr. Chatfield substantially or in response to his question as to how the accident happened, 'Of course I don't know, but I suppose I wanted something in the substation and without thinking walked into the live wire.'

WITNESS.—(Continuing.) I know Mr. Perrin. I had a conversation with Mr. Perrin in Fallon after the accident—about a year after. I don't think Mr. Perrin asked me how the accident happened. He didn't ask me how I happened to run into a  
383 live wire and get burned, and I didn't say to him "I don't know, I must have forgot." I have met Mr. Pittman. I had a talk with Mr. Pittman about the accident a few days after the accident. I can't remember whether or not he asked me how it happened. He didn't ask me how I happened to walk into a live wire, and that wire, and I didn't say to him in substance and effect, "I don't know, I must have forgot."



**[Testimony of Mr. B. F. Dickinson, for Plaintiff.]**

Mr. B. F. DICKINSON, called as a witness on behalf of plaintiff, being first duly sworn, testified as follows:

384 Direct Examination by Mr. CURLER.

My name is B. F. Dickinson. I live in Reno. I was born and raised there. I follow automobile work. Prior to that time, I was doing electrical work. I have been engaged in electrical work with the Truckee River General Electric Company at their power-houses, the Flash, Fayrad, and Mogul. I have been employed in electrical business about five years. I [207] was operator and power-house foreman. I was in Fairview about the middle of September, 1911. I was at the substation that comes in off the power-house line. I saw two  
385 substations there. I visited the power company's substation, I should judge. With reference to the line, it is the first one. I was alone. I made an examination of the apparatus there at that time. I examined the high tension lightning-arrester apparatus. That was just on the outside of the substation. There was just simply the lightning-arrester and the switch there.

Mr. CURLER.—Q. Did you notice whether there was any fence there or not?

A. I think there was a couple of wires strung around there at the time.

(Testimony of B. F. Dickinson.)

WITNESS.—(Continuing.) I made measurements from the center of the insulator number 386 1 (marked No. 1 on defendant's model) to the building—it was approximately three and a half feet. I know definitely the measurement as to the height,—it was five foot nine inches. I found wrapping on the pipe. I made drawings from the memoranda I took at that time, but I have lost them. I will make a further search for them.

**[Testimony of Lee Campbell, for Plaintiff.]**

Mr. LEE CAMPBELL, called as a witness on behalf of plaintiff, being first duly sworn, testified as follows:

Direct Examination by Mr. CURLER.

My name is Lee Campbell. I am a journey-  
387 man lineman, of any kind of line construction—telephone, electric light, power line. I commenced line work the 10th of August, 1876, at Howard, Illinois, on the Illinois Central Railroad. I have been in the business ever since,—working continually with the exception of about three or four years when I followed prospecting. I am familiar with part of the Pacific Power [208] Company's lines. I have worked on them. The last time I worked on them was about the eighth day of December. I first went to work on the Pacific Power  
388 Company's line either in September or October, 1911. I worked on the lines with the con-

(Testimony of Lee Campbell.)

tractor in December, 1910, under contractor Hess, who built the line. I first worked for the Pacific Power Company, or Hydro-Electric, as it was then, in the latter part of June, 1911, at Fairview, Nevada, and riding the line between Fairview and Wonder and at Wonder substation. I inspected the line to see the condition of the line and the insulators, and

see that everything was O. K. The duties of a  
389     lineman consist in most everything included  
around electrical appliances—most anything  
you are asked to do around an electric line, anything  
from digging holes, climbing up poles, setting up  
machinery, or anything else. It is part of the duty of  
a lineman to work on live wires up to a certain volt-  
age or take his chances on live wires at any voltage.  
I received as my pay as lineman Five Dollars a day  
for eight hours' work. I have had a varied ex-  
perience in the construction of lightning-arresters—  
different makes—extending over in the neighbor-  
hood of twenty-three or twenty-four years. I  
390     have put up as high as fifty in one town, on the  
Westinghouse system, Huston and Edison  
systems, Western Union Telegraph and Telephones,  
and all electric light lines—covering all kinds of  
makes of lightning-arresters. I had something to do  
with the construction of the lightning-arrester at  
Fairview, Nevada. I was under Mr. Greenleaf's and  
Mr. Halpenny's direction. At that time, I think Mr.



(Testimony of Lee Campbell.)

Greenleaf was Superintendent of Construction of the operating plant, and Mr. Halpenny was installing transformers—substation man, as I understood, and foreman on the job. The man that framed the

[209] timbers came from Bishop. He was a  
391 carpenter. Mr. Greenleaf, and myself, Cliff

Herring and Mr. Sheaff were around in the bunch too. Mr. Halpenny was there. He helped fix up some of the wires, I believe on there, and paint the gas-pipes—we were all working there together.

As near as I can describe it there is a pretty fair model in front of you—that clay model over there by the house; that model is better than I can describe it. These wires running from the top of the structure furthest from the house, to the house represent the

line wire, the live side of the switch going into  
392 the transformer from the air switch, that is the air switch; it would be the dead side of the

switch with the switch open, and it represents the line going there into the substation from the switch; it would be the dead side with the switch open. The wires running from the insulators next to the building to the insulators below represent the gas-pipe connections, on the live side, the line going to the horn gap lightning-arrester—that is what it is called.

The wires running from the insulators on the  
393 brackets on the structure furthest from the building represent what is known as the dead side or the side that takes the lightning to the ground. They were gas-pipe—quarter-inch gas-pipe, with a four and a quarter inch gap between the live

(Testimony of Lee Campbell.)

side and the dead side of the lightning-arrester. The four and a quarter inch gap is directly in the circle of the two horns, down between the pins there at this point (indicating on model). I was hired as a line-man. I helped set the poles down to the shaft where the ground-wire went to; I helped tie those  
394 wires on a fixture there on the bottom, and up also on top. (Witness goes to model.) I tied this one here and tied this one here (indicating on model). I tied the pipe to the insulator on No. 1.

Mr. CURLER.—We will call this Number 2.  
[210]

Mr. CANNON.—Yes.

WITNESS.—(Continuing.) I think I helped to hold that pipe No. 2 down while it was tied. I tied insulator No. 3 down, got up on the fixture here, and  
394 put my knee on there, and held that down, and tied it. I worked around there at different works, helped whatever I could do in the construction of this thing. I don't remember of doing anything else, except wrapping these wires around here, helping to bind this on; going around here and getting this ground wire down through here and up through here, where it went up to these poles here. I assisted in putting a wire from the end of the pipe from insulator No. 4 to the pipe on insulator No. 5, on to the pipe on insulator No. 6. I helped to get  
395 the wire running through between these horns, in a trench—I helped to get this wire from around this corner of the building here up to

(Testimony of Lee Campbell.)

the fastening. It ran from this corner of the building where that was attached to the ground-wire up to that point there, where it ran out over the line on the poles down to the shaft that had the water in for this ground-wire here. Mr. Halpenny, Mr. Greenleaf, Clifton Herring and I were all working on that thing together. We wasn't on that construction very long; I don't think it was over two hours

and a half, something like that. There was  
396 conversation between the four of us, Mr. Greenleaf, Mr. Halpenny, Mr. Herring and myself with respect to this appliance at that time.

Mr. CURLER.—What was said?

Mr. CANNON.—That is objected to on the ground it is hearsay—well, I object to it on the ground it is immaterial.

Mr. CURLER.—The purpose of this, if your Honor please, is to show that the officers of this company knew of the dangerous condition of this appliance.  
[211]

Mr. CANNON.—If **that is the point**, I object to it on the ground, first, that no foundation is laid  
397 for the introduction of any such testimony; there is no testimony here that the contrivance was dangerous, or defective in any way; and, secondly, that it is immaterial, irrelevant and incompetent from any view of this case, whether it was or whether it was not. The only question that can be of any importance here, so far as the plaintiff is concerned, is whether or not he was sent to work at a place which was reasonably safe for the purpose,



(Testimony of Lee Campbell.)

in view of the dangerous character of the employment.

The COURT.—He may recite the conversation that occurred between these four parties.

He has already testified as to the position held by two of the men who were there.

Mr. CANNON.—Your Honor will allow me an exception to the ruling?

The COURT.—The exception will be noted.

The ruling of the Court in thus allowing the question to be asked and answered is here designated as

**Error No. 3.**

A. As near as I can place it word for word, I made the remark that that was criminal carelessness to leave that lightning-arrester that low, that close to the ground.

Q. What else was said further than that and  
399 by whom?

Mr. CANNON.—Before this question is answered, let it be assumed, if the Court please, that I renew my objection to each of these questions along this line as they are asked.

The COURT.—To the whole matter in relation to this conversation, unless it goes outside the lines I already indicated. [212]

Mr. CANNON.—I move to strike out this answer on the ground it is incompetent, irrelevant and immaterial, and hearsay.

The COURT.—Suppose you leave that motion until the conversation is in.

(Testimony of Lee Campbell.)

Mr. CANNON.—So long as we will not be considered to have waived it.

400       The COURT.—You will not be considered to have waived it, and after it is in, you can make such motions as you wish.

Mr. CANNON.—And consider each question objected to on the grounds already stated, and on the further ground there is no proof here at this time that the construction was in fact defective in any way, shape or form.

Mr. CURLER.—We expect to show that later on, your Honor. We cannot show it all at once. What was the last question?

Q. (The reporter reads the question.)

A. Well, it was just a general remark  
401       amongst the bunch of us there, Mr. Halpenny, and Mr. Greenleaf, and Mr. Herring, and myself, in regard to the height of that from the ground.

The COURT.—Q. What did each one say?

A. To bring the exact words down—

Q. As near as you can give it.

A. I made the remark it was dangerous and careless to go away and leave that in that position, and Mr. Halpenny stated to Mr. Greenleaf; he says, “Are  
402       you going to put that up now and leave it that way?” And Mr. Greenleaf says “We will have to put something here, it will not be safe to leave it any other way without a lightning-arrester here, or some protection on this end of that line.” That was the remarks, I believe, as far as the conversation was concerned. They [213] had a talk

(Testimony of Lee Campbell.)

between themselves, but I don't just recollect what it was, something in regard to lightning.

Q. Where was Mr. Sheaff at this time, if you know?

A. He was generally all around, first one place and then another, around the building; but I believe at the time I made this remark, I think he was  
403 standing around the corner on this side, doing something with the wire.

Mr. CANNON.—By “this side” you mean what, the north side?

A. The north side of the building; or he might have been just over the hill there; I don't know just where he was at the time of the conversation; I don't know just exactly where he was at the time I made this remark.

Mr. CURLER.—Q. Was he present with you and these other men at that time?

A. Not at the time that I made this remark,  
404 to the best of my knowledge; he may have been directly behind me, but I didn't see him; he wasn't in my sight at the time I made this remark.

Q. Mr. Campbell, basing your opinion upon your experience with electricity—

Mr. CANNON.—That is all of the conversation, is it, Judge?

Mr. CURLER.—Yes.

Mr. CANNON.—Your Honor, I move to strike out all the conversation as incompetent, irrelevant and immaterial, and hearsay; no foundation laid for its introduction; no evidence of any defective character



(Testimony of Lee Campbell.)

of the lightning-arrester itself; and as to whether or not it was defective or unscientific in any particular is a false quantity in this case and has nothing  
405 to do with it; and is merely the expression of the opinion of the witness on the stand. [214]

The COURT.—The motion is denied.

Mr. CANNON.—Your Honor will allow me an exception.

The COURT.—You may have an exception.

The action of the Court in allowing this line of questions to be asked and answered is here assigned as

#### **Error No. 4.**

Mr. CURLER.—Q. Mr. Campbell, basing your answer upon your experience as an electrician, was this lightning-arrester a standard construction with reference to the height of the live ends of the lightning-arrester?

406 Mr. CANNON.—We object on each and all of the grounds heretofore stated; and on the further ground the question as to whether it is standard or not standard is absolutely immaterial; the rule of law applicable to cases of this kind being, if the question of the construction is material at all, that it need only be reasonably fit for the purpose intended; it does not have to be of the latest design or construction; it does not have to be of any standard  
construction; it must only be, considering all  
407 the circumstances surrounding the particular place where it is to be used, and the manner in

(Testimony of Lee Campbell.)

which it is to be used, reasonably fit for the purpose intended.

The COURT.—There is no question but what that is the rule. One is not required to use the very best construction, or the very latest devices, but to use what an ordinarily prudent man engaged in the same business would have used at that time. I think this question tends to bring that out, and I will allow the question.

Mr. CANNON.—Your Honor will allow us an exception.

The COURT.—The exception will be noted.  
408 The action of the Court in allowing said question to be asked and answered is here assigned as [215]

**Error No. 5.**

The COURT.—It seems to me it would be better to ask what is the usual height in cases of that kind among men who are careful in that line of construction.

Mr. CURLER.—Q. Well, Mr. Campbell, what is the usual height of the live ends of a lightning-arrester of this kind among men who are reasonably careful in the construction?

Mr. CANNON.—Object to that, if the Court please, upon each and all of the grounds heretofore stated; and upon the further ground that it calls for  
409 the opinion of this witness as to what other people do who are reasonably careful, as to whether other people are reasonably careful, and, furthermore, that it is too general; it is very plain

(Testimony of Lee Campbell.)

that there might be one rule applicable to a lightning-arrester in a city or town where children are apt to get into contact with it, and an absolutely other and different rule, on the top of a hill in the desert or uninhabited portion of the State, where people are not likely to come in contact with it.

410       The COURT.—The objection will be overruled.

Mr. CANNON.—We note an exception.

The action of the Court in allowing said question to be asked and answered is here assigned as

**Error No. 6.**

A. I will have to answer that question by observation that I have saw along this power line. They have those lightning-arresters—some places they are seven feet from the ground, and some places twelve feet; in my opinion, I should not think they were safe less than twenty or twenty-two feet.

411       Mr. CANNON.—I move to strike out the answer of the witness on each and all of the grounds heretofore stated, [216] and to strike out that part which relates to his opinion, as not responsive to the question, because it calls for the usual construction.

The COURT.—The latter part of the answer may be stricken out on the ground it is not responsive to the question. The motion as to the remainder of the answer will be denied. You may have an exception.

Mr. CANNON.—We note an exception.

The ruling of the Court in refusing to strike out



(Testimony of Lee Campbell.)

the answer of the witness is here assigned as

**Error No. 7.**

412 Mr. CURLER.—Q. Mr. Campbell, in your experience prior to the time that you observed this structure—this lightning-arrester—had you ever seen a lightning-arrester of this character constructed so that the live ends of the lightning-arrester were as close to the ground as this one is?

Same objection, ruling and exception.

The action of the Court in allowing said question to be asked and answered is here assigned as

**Error No. 8.**

A. Never.

Mr. CURLER.—Q. Mr. Campbell, did you ever see any other lightning-arrester constructed on the same principle that this one is.

413 Same objection, ruling and exception.

The action of the Court in allowing said question to be asked and answered is here assigned as

**Error No. 9.**

A. No, sir, not outside of this present power line.

Mr. CURLER.—Q. Where have you seen lightning-arresters constructed on the same principles as this? [217] A. I saw one in Aurora.

Mr. CANNON.—That is objected to on the same ground.

The COURT.—The same ruling.

To which ruling the defendant then and there ex-

(Testimony of Lee Campbell.)

cepted and said exception is here assigned as

**Error No. 10.**

414       A. Aurora and Lucky Boy Hill, or Lucky  
          Boy Town, and this one here at Fairview, and  
          one at Wonder, Nevada.

WITNESS.—(Continuing.) I worked in Wonder  
a few days in June, or a half a day probably; I  
worked in September, the latter part of September  
or October, I forget which, and from that time I  
stayed in Wonder till July; then I went down to Fal-  
lon, and from Fallon I came back to Wonder, and in  
Wonder I have been with the company more or less  
ever since—at Wonder, Aurora, Lucky Boy, at those  
          three points. I never saw the machinery that  
415       furnished the power to this line but once in  
          the power-house. That was somewheres  
about the 12th of October, 1913, I was there in the  
station. I was in the Wonder substation on the 18th  
day of July, 1911, I was there as a visitor; I was  
making inquiry. I was in the Wonder substation  
on the 2d day of July, and I was in there on the 5th  
and 6th, along the 6th day of July, and the evening  
          of the 5th—just stepped in and just stepped  
416       out again. I have been there since then. I  
          can't remember the date that I went back and  
went to work for the Company there at the substa-  
tion—took charge. I made the measurements be-  
tween the horns at the time the arrester was con-  
structed, with a block—sawed a block off and made  
it that distance, four and a quarter inches, if I rec-  
ollect right,—under Mr. Greenleaf's instructions. I

(Testimony of Lee Campbell.)

did not determine the [218] distance that the live and dead ends of the arrester should be put apart. Mr. Greenleaf determined that.

417 Mr. CURLER.—Q. Do you know from your experience as an electrician, whether the distance between the live and dead ends of the horns of the arrester is determined by the amount of voltage the line carries?

Mr. CANNON.—Objected to on the ground it is incompetent, irrelevant and immaterial, and outside of the issues, in this, that there is no charge in the complaint that there was any defect in the respect mentioned, as to the distance between the horns of the arrester.

The COURT.—Well, I will allow that question, for its bearing on the question as to how much electricity the line was intended to carry; and then  
418 whether such a construction was sufficient with the line carrying that amount of electricity.

Mr. CANNON.—Under that ruling, I would add to my objection that the amount which the line was capable of carrying is immaterial as testimony for the purpose of showing how much it was actually carrying on the 18th of July, 1911.

The COURT.—It is not admitted for that purpose. It is only admitted as to its bearing upon the structure itself, whether it was negligent construction under the circumstances, or not.

Mr. CANNON.—As to that, if your Honor  
419 please, the only charge in the complaint as to defective construction is that it was not high



(Testimony of Lee Campbell.)

enough from the ground; there is no other charge.

The COURT.—That is the only testimony of defective construction that you have here so far. It is only for its bearing on that question. [219]

Mr. CANNON.—Your Honor, may I simply have it considered my objection as to the character of testimony of defective construction, may be repeated, and your Honor makes a ruling, and I take an exception.

The COURT.—Certainly.

420 The action of the Court in allowing said question to be asked and answered is here assigned as

### **Error No. 11.**

A. I do; that is the way they measure it.

Mr. CURLER.—Q. What amount of voltage on the line—now where the arc is not drawn—but what amount of voltage on the line will cause the electricity from the live end of the wire to jump to the dead end of the wire?

A. Well, from observation, the volt meter in the substation carrying one hundred and ten volts, and an increase or surge on the line there—the  
421 only time I saw it go across was at Aurora; and the volt meter went round to about 145 or 150 volts, went across the arc, and broke one of those blocks down below.

Q. Do I understand you to say, Mr. Campbell, that you are not a technical man, and that you don't know how much voltage would be carried on these wires, that would step down through a transformer

(Testimony of Lee Campbell.)

that would make sixty-six hundred volts, and would read on the lower end one hundred and ten volts?

A. The reading on the—well, I would not  
423-43 go into detail on that, no.

Q. You mean to say that you can't go into detail upon that?

A. No, I can't go into detail in regard to that. That is, if you will let me explain myself—if I was called on examination to explain why I know these things, I am not [220] able to figure it out; I am not a mathematician.

Mr. CANNON.—I think the witness has explained before he was a lineman; he has not qualified as an electrician at all.

Mr. CURLER.—At the time that you say a block went out, did you know how much voltage was on the high tension wire?

A. No, I did not—the exact volts I don't know.

WITNESS.—(Continuing.) The object of this lightning-arrester, or any other arrester,—this part here is simply to take the overcharge voltage that comes in on this wire; if the voltage increases  
1 on this wire, such as from lightning, or a machine running away, or anything else, the object is to carry the excess voltage to the ground, and save the transformer. Now that applies to all lightning-arresters, of all types. It is determined by the voltage carried on the line; and when there is any excess voltage running down on this line, whatever it has on it; if this should be to carry fifty-six thousand volts, and the voltage increases, it arcs

(Testimony of Lee Campbell.)

across this, and travels up these arcs, until it  
2 breaks. The object of these curves on this  
lightning-arrester here, leading back this way,  
is for the arc to travel up, and continually pull away  
from one side to the other. That is about all there  
is to it. Whenever an overload goes across, this  
takes care of the overload or overcharge, or surge on  
the line. By surge I mean excess voltage. Where  
this building stands, the ground was just leveled off  
there, and it was also levelled around here, with this  
waste, going back in here, running off down the hill,  
and sloping over to this corner here, the south-  
3 west corner. There was some rock piled right  
here—the northwest corner, and running  
down this way, sloping off to the west—I guess it  
would be the northwest, if it was put square on the  
compass; I think this house [221] faces the south-  
east, that is, if you put the compass on it, and this  
would represent the north, that would be south, this  
was west and this was east (indicating on model).  
Now, along here between this lightning-arrester and  
the fence was level ground; to the northwest corner  
and to the southwest corner is loose rock piled  
4 up over the hill here and running down this  
way—all loose rock. Commencing about here  
was about the first of the bad rock; there was some  
loose rock right around here (point marked “A”).  
There was loose rock in here (point marked “B”);  
this was filled up in here too. Between the lightning-  
arrester and the building was level ground. Well,  
right from about here is where that ground com-



(Testimony of Lee Campbell.)

mences to slope—from there down that way about one foot in four—from about that position (indicating on model). From the lower timber of the arrester on the north side, to the opposite  
5 point,—a point opposite the same timber on the south side, was rough, made ground.

Mr. CURLER.—Q. Will you draw a line across there from where the ground started to slope?

(Witness draws line on model.)

A. Somewhere about there. It is all filled in down in here; from this point here out around about that way, was all rough ground, carried on out; it was the waste ground taken away from the excavation, and throwed out in that direction, to the southwest.

WITNESS.—(Continuing.) The ground west of the lightning-arrester was all made ground,—  
6 rough. Part of it sloped about one foot in four, and some of it was pretty steep; some of it sloped, and a man would almost fall down over it, walking over it, especially this southwest corner here. The point between the lightning-arrester and the switch was rough ground down there; it was all rock, all excavated around the building there. I think the biggest was probably not over [222] a foot square, and maybe some twelve or fourteen—about ten or twelve inches, I think would be about the biggest rock, about a foot square—something that  
7 would come out of an excavation—all mixed together. There was quite a few of them scattered around over this point here, down in through there; these rocks here were the smaller

(Testimony of Lee Campbell.)

ones; closer to the level ground was the smaller rocks, the larger rocks were farther away, farther towards the west. The ground from the point "D" passing along on the north side of the arrester to the east side of the arrester, out to the southwest corner of the building was smooth. There was a space over there on the southwest corner of the building that was smooth, and the rest of this was rough, filed with made ground. When the lightning-arrester  
8 was being erected in the substation at Fairview the transformers, when they were working on the inside, could be heard on the outside of the building in the vicinity of the lightning-arrester, provided the current was on, they could be heard on the outside of the building in the vicinity of the lightning-arrester, with the exceptions of the vibrations of the telephone fastened on the corner of the building, which would make so much noise, it would be impossible to hear anything except the vibra-  
9 tions of the telephone line. I don't know whether or not the telephone was there at the time of the accident.

Cross-examination by Mr. CANNON.

You bet I have heard that purring noise on the transformers frequently. It is a peculiar sound, just like a rattlesnake. In a building with corrugated ironsides you can hear through that corrugated iron very readily. When I was working around there on that lightning-arrester, that is, on the end of it, there was no current on there. I al-

(Testimony of Lee Campbell.)

ways worked as a lineman and received pay as  
10 a lineman. I did not work as a laborer in the  
month of June, 1911. A lineman [223] is  
supposed to know all of the business in connection  
with the running of lines, or handling of lines, alive  
and dead, and to do any kind of wiring around a sub-  
station or plant. I know what pay I was getting.  
My pay was five dollars a day. In the month of  
June, 1911, my pay was not four dollars a day. I  
received a check from Mr. Halpenny at the post-  
office in Wonder at the rate of five dollars a  
11 day. I think it was two checks, I don't know.

I believe I received one check signed "Hydro-  
Electric Company." I think I received two checks  
for those June services. I don't even recall the  
amount of those checks, nor the number of days em-  
ployed during the month. Mr. Halpenny kept my  
time. I kept track of the time myself at the time in  
my mind. When I came to settle up with Mr. Hal-  
penny I certainly would know whether his figures  
were correct with mine or not.

When I came to settle with Mr. Halpenny,  
12 I think he told me I had so many days coming  
and we agreed. We didn't agree on the  
amount to be paid. He claimed I was to be paid four  
and a half, and I claimed five dollars, and he said he  
would allow me enough overtime to make this five  
dollars a day pay. His side of it was that he was  
only crediting me with four and a half a day as line-  
man. When I went to work, I didn't have any  
agreement on the subject. I believe that check was



(Testimony of Lee Campbell.)

the first check I got from the Pacific Power Com-  
pany. Mr. Greenleaf hired me. Mr. Green-  
13 leaf and I didn't have any agreement as to the  
amount of pay. I hired out as a lineman, and  
when I came to settle up with Mr. Halpenny, he fig-  
ured my pay as lineman at four and a half a day. I  
insisted on five dollars a day and got it. It is not a  
fact that I simply got four dollars a day, and not five,  
and not even four and a half. I don't remember if  
I worked for the Pacific Power Company from  
the 12th of June to the [224] 19th of June,  
14 both days inclusive, and during that time I  
put in the equivalent of eight days and six  
hours. I did not put in eight days and six hours and  
receive for my services two checks, one for nine dol-  
lars, and the other for twenty-six dollars, being the  
equivalent of four dollars a day. All the checks I  
received, to my knowledge, in the month of June  
were two checks, the amount of both checks I have  
forgotten. I received the first check as per his time  
book, and his wages, and I would not accept  
15 that, and he agreed to allow me enough over-  
time to make my salary five dollars a day—  
that is the cause of the second check. This light-  
ning-arrester is of a certain recognized type called  
the horn gap lightning-arrester. It is used on the  
Pacific Power lines alone, as far as I know. I have  
read the instructions that come with all lightning-  
arresters.

Further Direct Examination by Mr. CURLER.

The exact height of the live arms of lightning-ar-

(Testimony of Lee Campbell.)

resters which I have constructed, other than this one, I have not measured, but I think it is about eleven feet. That was the lowest constructed lightning-arrester I ever saw—the nearest to the ground.

16 The next lowest to this one here is in Aurora, close to the ground, and I think it is about eleven feet—I never measured, but I think it is about eleven feet to the ground from the live side.

Mr. CURLER.—Q. Mr. Campbell, is this the ordinary type of lightning-arrester, generally used?

Mr. CANNON.—We object on the ground it calls for the opinion of the witness, and is incompetent, irrelevant and immaterial, and outside of any issue in this case.

The COURT.—Well, he has testified that he never saw this type except in certain places already,  
17 has he not? I think he has testified to seeing other types of arresters in [225] other places. It seems to me he has already answered that in response to your question. You can ask the question, but it seems to me it has already been answered.

Mr. CURLER.—I would like to have the question answered.

The COURT.—Very well.

Mr. CANNON.—We note an exception. Would your Honor allow me to add one other ground to my objection; namely, that the only point made in the pleading as to any defect in this arrester, is as to  
18 its distance from the ground. There is not any charge in the complaint, as I have read it, that states that the lightning-arrester itself

(Testimony of Lee Campbell.)

is a defective construction, or not one of general and ordinary use. Let me read the allegation in the complaint. (Reads allegation III in the complaint.)

(Argument.)

The COURT.—Well, I am exceedingly doubtful about it.

Judge CURLER.—But you are so confident about the matter, I will allow you to put it in. The defendant may have an exception.

Mr. CANNON.—We note an exception.

The COURT.—You may have an exception  
19 for the reason you have stated.

The action of the Court in allowing said question to be asked and answered is here assigned as

### **Error No. 12.**

A. That is used by some companies.

Mr. CURLER.—Q. Can you state whether or not it is in general use by companies engaged in carrying on the business of transmitting electricity in high voltage over wires?

Mr. CANNON.—The same objection, and on the further [226] ground it calls for the opinion of the witness as to what constitutes general, use, and requires him to testify outside of his own experience, and anything outside of his own experience  
20 would be hearsay upon the question of general use.

Mr. CURLER.—I will add to the question, basing your answer upon your general experience as an electrician.



(Testimony of Lee Campbell.)

Mr. CANNON.—I will add to my objection, therefore, that his own experience cannot be held to constitute general use; and that, therefore, it calls for his opinion.

The COURT.—It will be the same ruling, and you may have an exception.

The action of the Court in allowing said question to be asked and answered is here assigned as

**Error No. 13.**

21       A. Not in use except by the present company, the Pacific Power Company, or the Nevada-California Power Company, to my knowledge.

WITNESS.—(Continuing.) I believe the first time I ever saw Mr. Sheaff was the 14th day of January, 1911. He worked in the same construction crew that I was in, between where the King Mill is now, south of Rawhide, near Dead Horse Wells, to Wonder, Nevada; he worked in the crew constructing the line between there and Wonder. Up to within a few miles of Wonder. Subsequent to  
22       that he worked in the same crew I did, till about the second or third day of February. Subsequent to that, I worked with him a few days right around Fairview there; he was in the crew in which I worked over there at Fairview, in the construction of the line between Dead Horse Wells and Wonder, he started in digging holes, and we were short a man in the wire gang, and I requested the foreman to bring him back. He came back, and did what we call “bull-ringing” of the wire from the

(Testimony of Lee Campbell.)

wire wagon over to the telephone [227]  
23 poles. I have never seen Mr. Sheaff work on  
live wires in my presence.

Further Cross-examination by Mr. CANNON.

Mr. Sheaff started in digging post holes on the main line being built from Lucky Boy Hill substation to Wonder, in January, the line started out in December, 1910. Mr. Sheaff continued digging these post holes not very long, just a few days. There were three separate gangs, one gang digging holes, one gang setting poles, and the wire gang. Mr. Sheaff after being at work a few days digging post

24 holes, was taken from that work and put into  
the wire gang. He was placed at the particular work of bull-ringing the wire from the wagon to the poles, carrying it over to the poles—the sagebrush was pretty high. That work is what we call the groundhog's work. He was working in conjunction with the wiring men. All the wires were dead at that time, and nobody was working with live wires at that time. I had never seen a lightning-arrester of this type up to the time of the accident, besides this particular one. I knew of the horn gap

lightning-arrester in May, 1910. Prior to  
25 that time I had known of electrolytics, and  
Westinghouse types, and Sterling type, and

various types. I am not in a position to testify from my own knowledge to what extent they had been used outside of my own personal observation. These wires or pipes on that so-called dead side are not connected up with any wires, only with the ground wires.

(Testimony of Lee Campbell.)

On the opposite side the wire or pipe is connected with the high tension wire above, and those two wires or pipes, one on the dead side, and the other on the live side, are called respectively horns. This

26      curve turning around on one side in one direction and the other side in the opposite direction are known as the horns of the lightning-arrester.

The space between those two horns at the curve is [228] called the space between which the arcing distances are supposed to jump—the gap. The object of this construction is this, that if there should be a lightning storm, and a heavy charge of lightning should come on the high tension wires by way of a surge or a sudden increase in the voltage, that if it

gets too high, it will be relieved by jumping  
27      across this gap, and then being conducted to the ground. It arrests or stops the *the* destructive operation of the lightning. The distance

of the gap is spaced according to the load which it carries. In the ordinary voltage it is designed to carry there would be no jump. While the wires are charged on the dead side, the wires are supposed to be dead, the theory being that they would be dead unless electricity jumped across from the live to the dead wires—there would be no regular current on

these dead wires at all unless it should jump  
28      across from the high tension wire. Where it jumps across it makes an arc. It carries a

blaze of current, and that blaze or arc conducts electricity. When electricity jumping from one point to another forms what is called an arc, it enables, as



(Testimony of Lee Campbell.)

long as that arc remains, the electrical current to continue to pass through it. If an arc were formed at this point, and continued there, it would carry away, not only the lightning or supercharge, or surge, but it would carry away a percentage of the current regularly passing along the line. The

29 spread of the horn on top is to break the arc on top. The arc has a tendency, for some rea-

son or other, to rise instead of to fall. If an arc should be formed in this gap in that particular lightning-arrester, the tendency of that arc would be to rise. As it would rise, it would stretch until it breaks. As the distance between the wires becomes greater, as the arc rises, the arc would be elongated or stretched. In that work in constructing the lightning-arrester of this type, it is necessary to provide

a sufficient clearance for that arc when it

30 [229] rises. It would not do in constructing a lightning-arrester of that type to have it too close to the high tension wires above. It would have to be constructed a sufficient distance from the high tension wire above but not in *relative* to the position of that one there. In other words, that could be set on one side way over here somewhere, or set away over here somewhere (indicating). I did not help build this original fence prior to this accident. I do not know that fence was there. The

gang I was working with in June, did not, nor

31 nor did I, work on the fence at all. When I made this remark to the men that were engaged with me in building that lightning-arrester

(Testimony of Lee Campbell.)

there was no fence around it at that time. According to my judgment this model is a very fair representation of that lightning-arrester. It is a very close model.

Mr. CANNON.—We offer this model in evidence.

Mr. CURLER.—We object to it at the present time, if your Honor please, upon the ground it has not been shown to be correct or accurate.

32 Mr. CANNON.—I think there is sufficient foundation laid. This witness testifies that it is a very close model; that is as near as any model can get.

Mr. CURLER.—There has not been any testimony as to whether this model is constructed on a scale, as to whether these horns on this model show the proper distance from the ground on the scale, or whether these horns show the proper distance from the building on the scale.

Mr. CANNON.—I am willing to give Judge Curler an admission, as I told him I would this morn-  
33 ing, as to the distance from the center of the insulator on the live side, to the end of the pipe.

Mr. CURLER.—Possibly, your Honor, we can agree [230] so that the model may go in, because we would like to have it go in on the basis that it is accurate. We believe it will assist the Court and jury to understand this case more thoroughly.

Mr. CANNON.—It will be admitted that the arm of the lightning-arrester on the live side from the center of the insulator projected out two feet and

(Testimony of Lee Campbell.)

three inches, which would on the model make  
34 two inches and a quarter.

Mr. CURLER.—With that correction on the model, we have no objection to it.

The COURT.—It will be admitted then.

Mr. CURLER.—It is understood that that also applies to both sides, the horns being the same distance from the arrester?

Mr. CANNON.—I don't know, I will see whether that is so.

The COURT.—It is admitted otherwise, this is made to a scale, and the scale is correct, and the distances?

Mr. CURLER.—What measurements I have made on it.

The COURT.—There has been no proof as  
35 to that point, and, of course, it can only go in for what it has been shown to be.

Mr. CURLER.—It is also admitted that the dead arms of the lightning-arrester extended two feet and three inches from the center of the insulator?

Mr. CANNON.—Yes. That would on the model make two inches and a quarter.

Mr. CURLER.—Can't those wires be corrected?

Mr. CANNON.—I think we can make an extension on there, or something, at recess. Otherwise you have no objection to this being admitted as being built according to scale, and we are willing that it be subject to correction, even then, if you want to correct it. [231]



(Testimony of Lee Campbell.)

36 Mr. CURLER.—As to these measurements, they seem to be correct your Honor, and if there is anything else, I will suggest it to counsel. You are not including this fence?

Mr. CANNON.—I am including the whole construction.

Mr. CURLER.—We cannot admit as to this fence, your Honor.

The COURT.—Then it is admitted in evidence as illustrative of the evidence so far offered, and as being correct in so far as it has been admitted to be correct, and proven to be correct.

Mr. CANNON.—Yes, and as being, I think  
37 what the witness calls a very close model. I think we are entitled to have it admitted for that purpose.

(Model marked Defendant's Exhibit "Q.")

WITNESS.—(Continuing.) This whole construction, this Fairview substation and lightning-arrester, were all on the top of a little knoll, but the top of the hill had been leveled off so as to give sufficient room for construction. On the south side of the substation, I think there is about four feet of comparatively level ground there. The north side is  
about twenty or twenty-five feet, I should  
38 judge, of very level ground, that is, running out straight to the north of the building and a little bit to the west. On the south side, I should judge, it went off down grade about one foot in four, maybe fifty or sixty feet, and then there was a gulch down there, between there and the Nevada Mill.

(Testimony of Lee Campbell.)

After that twenty or twenty-five feet of comparatively level ground, on the north side, it went down to the northwest. On the west side it went down pretty steep just outside of the switch. On  
39 the east side of the building, I think there was about thirty-five feet; a wagon road ran right in front there, and then it went off to another draw. They started to excavate the building there, and [232] then they changed the plans and excavated more off back this way than should be necessary; then they turned the building around the other way; of course, that made all that smooth ground in between that lightning-arrester there and the building. Then the building was subsequently not put on the ground and that left all of that comparatively  
40 level up to about the center post of the lightning-arrester. Then from that point out to the high posts, the ground was covered in some instances, by loose rock—small rock and large rock—general excavation. This was called made ground. These very large rocks I speak of were on the outer fringe or the outer edge and inside of that outer edge would be the smaller rock. These three blocks that appear on this model were not in at the time the arrester was practically finished by my gang. When I  
41 left there that wiring was complete and the insulating was in. On the live side the wiring was built up to and attached to the high tension wire overhead, and the ground wire which I spoke of, which is represented by this light copper wire, was also in. That ground was practically as

(Testimony of Lee Campbell.)

shown in the model. This copper wire was carried to the ground and put into a trench and covered up with earth and carried out of this enclosure. The enclosure was not there at that time. It was carried to the corner of the building and was carried from

that point over to the shaft. I should judge  
42 the shaft was about five or six hundred feet from the substation. It was carried quite a

long distance from the substation itself, and then the wires were put down in some abandoned shaft on a big copper plate and into the water at the bottom of the shaft. The object of that was to furnish a proper ground for any supercharge that should jump across this gap and go out through this ground; it would be carried into this well or shaft which was

five or six hundred feet away, and there go  
43 into the earth. The country was very dry

over there, and they had to have a connection and sometimes they haven't got water [233] to make a false moisture in the ground, or create a moisture; if the earth is dry they have no contact to make a ground, sometimes, to carry off this current. The water itself would be a sort of resistance. If you put it in water and did not connect with the earth you would have more or less resistance through the water. It is not a fact that the idea was to get it in a place where there would be resistance.

44 There would be some resistance so that resistance would aid in some measure in breaking the arc after it had already formed—a dead ground would break the arc. A dead ground would not have



(Testimony of Lee Campbell.)

a tendency to keep the arc alive. It is to get a conductor to carry that excess current to the earth, and take it clear off the line entirely; the idea of that, to get down the resistance, would simply be to decrease the voltage.

Mr. CANNON.—Q. Is it not a fact if your ground does not furnish any resistance at all, you will  
45 not only carry off the excess once your arc is formed, but you will carry off the regular current itself?

A. You will carry off—the object of the lightning-arrester—

Q. (Intg.) Can't you answer the question. Read the question. (The reporter reads the question.)

Q. Is that true?

A. Well, I believe I stated that I am not a technical man, and to answer that question I would have to go into—

Q. If you consider that any way beyond you, Mr. Campbell, I will withdraw it.

A. Yes, sir, I do.

WITNESS.—(Continuing.) As this was constructed when I left it on that day before the  
46 accident, the ground was made so that a supercharge, if it jumped across this gap, would immediately be conducted to the ground, and it was so constructed that the ordinary charge, or ordinary load that would be carried on the [234] high tension wires doing business ordinarily, would not jump across that gap. That space was four inches and a quarter, and the material of each of

(Testimony of Lee Campbell.)

these pipes was quarter inch iron and a good conductor. Mr. Sheaff was in the gang that was building that lightning-arrester at various times.

47 He was not there continually while we were building that. He was not right around in the vicinity there during the whole construction; he was not there all of the time. He was on that knoll some place, the exact spot, I don't know, just where he was; he was working on other work besides the lightning-arrester, at times, and as far as the lightning-arrester is concerned, I don't think he had very much to do with the construction of it. I only saw

him bending the irons or carrying the irons or  
48 helping to bend them. I didn't see him bending the irons. I saw him with the irons in his hands carrying them, I believe from the southeast corner of the building, around there, coming through here (indicating on model). My memory is not just clear as to whether I saw him bending the irons. He was around there doing whatever he was told to do, but what he was doing at that particular point, I don't just remember. I don't know just what particular part he took in the construction of that lightning-

arrester. I could not state positively how  
49 much he was around while work was going on, or how much he was absent while work was going on. I did not set myself as a watch on Mr. Sheaff. It was none of my business to see whether he was working or not. I was there to do my own work and paid no more attention to him than I would to any other workman. At this talk which I said

(Testimony of Lee Campbell.)

occurred among us there while this construction was going on, after I had made this statement as to my opinion as to how this was being constructed, the question of a fence around it was discussed.

50 Mr. Greenleaf said he would have a fence constructed about [235] the place.

Redirect Examination by Mr. CURLER.

This is a picture of a horn type lightning-arrester (witness refers to picture in a book handed him by counsel). This picture here shows the live wires fastened to the bottom of the lightning-arrester. On the model, that is right here (indicating on model). According to that cut there, the live side, the lines there would be attached right to this point here (indicating on model). If this were con-

51 structured as the one that was shown to me in the picture, it would have to be constructed in a different place than it is now. It would have to be out on one side or the other of the line. This line on the left-hand side of the picture represents the live line. This represents the feed-wire of the live line. If this lightning-arrester were constructed as was the one shown me in the picture, this lower portion of the arrester would be attached to the live side here, and this would be the air space; this  
52 would be cut off here, according to that tap here, the live line should be tapped here; this would be cut off here, and fastened onto this, the same as this is here; these four sides would be a duplicate of the live side down here on this line.

Mr. CURLER.—Q. If this arrester were con-



(Testimony of Lee Campbell.)

structed as was the one shown you in the picture, is it not a fact that the horns would curve from here—from the line up here?

Mr. CANNON.—Objected to as leading and suggestive—clearly leading.

The COURT.—I will allow the question.

53       The action of the Court in allowing said question to be asked and answered is here assigned as

**Error No. 14.**

The WITNESS.—Before answering that, if I am allowed [236] to—the question is, where would they be connected in regard to that there?

Mr. CURLER.—Yes. Supposing this to be the line, and this to be the line, as shown in the picture.

A. That would have to be above those, according to that diagram there, in regard to the arc, showing a break of the arc above the line, according to  
54       this cut here; it is relative to the position of the frame work on which it is constructed; you have to make the connections from the line to your frame, in order to clear your horn gaps.

WITNESS—(Continuing.) This picture which you show me shows the legs or posts carrying the arms of the lightning-arrester extended above the line. If this lightning-arrester had been constructed as was the one shown in the picture, the lower arms of this lightning-arrester would have been fastened to the line up here, this side, the live end, and ex-

(Testimony of Lee Campbell.)

tended up over, that would come right out  
55 there and would turn right over like this, on  
your dead side right here, breaking your gap  
above the line, according to that out there. If that  
had been constructed according to this cut with refer-  
ence to the live line, the height would depend on the  
height of the live end to the earth, whatever that  
might be; I don't know relative to the height of that  
line. It doesn't make any difference whether the  
overcharge which is relieved by the lightning-ar-  
rester is caused by lightning or some other cause.

Whether it is lightning or artificial lightning  
56 does not make any difference. The object is  
to relieve the overload, that is, the over-  
voltage,—surcharge. If that line were struck by a  
heavy volt of lightning on the wires beyond several  
of the poles, the lightning would take the nearest  
point to the earth, which was not consumed through  
the transformers. There is no apparent reason why  
that lightning-arrester could not [237] have been  
built at another point, either north or south of that  
substation. If it were built either north or south of  
the substation, it would not have been necessary to  
have constructed the live arms so close to the  
57 ground. They could have been built at any  
height at all.

Recross-examination by Mr. CANNON.

There is nothing automatic about that lightning-  
arrester. An automatic appliance is something that  
does not work unless it has some help, and it must  
have some force or other, as I understand it to make

(Testimony of Lee Campbell.)

it work. A lightning-arrester works solely by excess current. If there were not a man within a mile of this substation and there should be a supercharge of lightning on the wire, the lightning-arrester would be supposed to carry off this overcharge of  
58 current. From that standpoint it would be automatic. If a great deal of power is being under in any direction from a high tension wire, and that power is suddenly shut off and is not used, it would cause the power to back up on the machine from which it generates, like suddenly backing up of water.

Mr. CANNON.—Q. What becomes of the excess? Isn't there some backed up there instantaneously, as water would be backed up?

A. Well, I don't know.

WITNESS.—(Continuing.) I told Judge Curler that this could be constructed so as to have it  
59 above the high tension wires. If this form of lightning-arrester were constructed above these high tension wires, it would not be practically upside down. This live wire would not have to be brought up, instead of going down and curving around, and would not curve around. In this picture the feed comes in from the bottom. This is the live horn of the lightning-arrester. The way that is constructed there, if you wanted to build in the air, and bring in feed from the bottom, it would be necessary to [238] carry those wires above this horn, above the high tension wires. It would be  
60 necessary to carry the live horn above the high tension wire. It would then be necessary



(Testimony of Lee Campbell.)

to have the dead horn constructed opposite the live horn. It would not be necessary to turn this construction upside down because you simply raise that construction, that above here, just as it is. You would not then have to raise your feed wire. Here is your feed wire; you could construct the fixtures on the outside of the line here, carry up your frame clear above the wires, make the tap to the live side  
of the horn gap here, and go across just the  
61 same; and this would break the arc here just the same.

Mr. CANNON.—Q. Supposing we were to disconnect this live horn from the insulator below, and carry it around in its same position, until we got it above, then we would have it following practically the same angle above as it follows below, and coming around over this way, wouldn't we, Mr. Campbell?

A. You would if you didn't release this connection here; I would change my connection down at this end.

Q. Leave it without releasing that connection; then we would have that wire standing above,  
62 as it now stands below; wouldn't we?

A. That is a question—

Q. (Intg.) That is a fact; if we did that it would be standing there, would it not?

Mr. CURLER.—We object to the question; it does not follow what the witness said, or follow the model given in the book.

(Testimony of Lee Campbell.)

The WITNESS.—That is correct, what he says is correct.

Mr. CANNON.—Q. Oh, what he says is correct, is it? A. Yes.

Q. Now, if it was done as I say here, it would be in [239] the position I have described, 63 would it not?

A. If it was done the way you have described it.

Q. It would be in that position?

A. Yes, but I would not attempt doing anything of that kind.

WITNESS.—(Continuing.) If you were to have your feed-wires come in from the building, as shown in this particular cut, you would have to carry your feed-wire down. Then in place of having a live wire down here in the shape of a horn, you would have a feed-wire down here practically the same place, both live wires; that would be alive here, and that would be alive here on that side.

64 Mr. CANNON.—If the Court please, in connection with the cross-examination of Mr. Campbell, I desire to offer certain checks that were not here at the time he was cross-examined, and which counsel agreed could be offered without laying any foundation, subject to their objection as to their admissibility. I now offer those two checks.

Mr. GEDNEY.—We object to these checks upon the ground they are immaterial, irrelevant, and not cross-examination, and not evidence under the issues in this case.

(Testimony of Lee Campbell.)

The COURT.—Mr. Campbell was questioned  
 65 about these very amounts, if I am not mis-  
 taken, the twenty-six dollars and the nine  
 dollars. The checks will be admitted.

Mr. GENDEY.—I ask to note an exception.

The COURT.—The exception will be noted.

(The checks are marked Defendant's Exhibit "S,"  
 and read to the jury.)

**[Defendant's Exhibit "S"—Checks.]**

"Pacific Power Company.

~~Not negotiable.~~

No. 119.

Wonder, Nev. 6-30-1911.

Pay to the Order of Lee Campbell.....\$26.00

Twenty-six and no/100.....Dollars.

6½ days @ 4.00.

Account of Trans. Line Maint. up to and  
 66 including & Wonder Dist. System.

6-30-1911 [240]

PACIFIC POWER COMPANY,

By R. H. HALPENNY.

To PACIFIC POWER COMPANY,

Bodie, Cal.

(Stamped)

419 PAID Jul. 22, 1911.

[Endorsed]: Lee Campbell. Klaus & Burns, by  
 Jas. Burns, Pay to the order of The German Ameri-  
 can Trust Co., Denver, Colo. The Cuban Cigar Co.  
 Pay to the Order of J. S. Cain & Co., Bodie, Cali.  
 The Anglo & London Paris National Bank. Pay  
 Anglo & London Paris National Bank, San Fran-



cisco, Cal., or order Denver National Bank, Denver,  
Colo. J. C. Mitchell, Cashier, Jul. 1, 1911.”

66 “HYDRO-ELECTRIC COMPANY.

~~Not negotiable.~~

70 Bodie, California, 6-30-1911.

Pay to the Order of Lee Campbell.....\$9.00

Nine and no/100.....Dollars.

Account of Wonder Sub Equipment 2½ days @  
4.00—To and including 6/30/11.

HYDRO-ELECTRIC COMPANY,

By R. H. HALPENNY.

To HYDRO-ELECTRIC COMPANY,

Bodie, Cal.

(Stamped) PAID Jul. 12, 1911.

[Endorsed]: Lee Campbell. C. L. Benadum.  
Pay to the order of Nixon National Bank, Reno,  
Nevada, Churchill County Bank, Fallon, Ne-  
67 vada. Pay to the order of any Bank or  
Banker. The Nixon National Bank, Reno,  
Nevada.”

**[Testimony of R. H. Halpenny, for Plaintiff.]**

Mr. R. H. HALPENNY, a witness produced on  
behalf of plaintiff, being first duly sworn, testified as  
follows:

Direct Examination by Mr. GEDNEY.

I am not in the employ of the Pacific Power Com-  
pany at the present time. I was in the employ of  
the Pacific Power Company on the 18th day of July,  
1911. At that time I was in Wonder, Nevada,  
68 at about half past ten o'clock on the 18th  
of July, 1911, at the terminus of the line at

(Testimony of R. H. Halpenny.)

Wonder. I knew the voltage the line was carrying. There was a slight difference in the amount of voltage between Wonder and Fairview. The Wonder and Fairview substations were fed off the same main line.

Mr. GEDNEY.—Q. Now, what was the voltage at about half past ten o'clock on the line at Wonder, as shown by the volt-meter there?

Mr. CANNON.—Objected to on the ground that it is incompetent, irrelevant and immaterial, because the controlling [241] thing in this case is the voltage on this particular live wire on the arrester; and we contend there is a vital difference from  
69 the voltage at Wonder and on the main line.

Mr. GEDNEY.—They can show the difference.

Mr. CANNON.—I think they ought to show the voltage at that particular place.

Mr. CURLER.—We cannot show it all at once; that depends on the voltage on the main wire.

The COURT.—You may ask the question. I presume you will follow it up?

Mr. GEDNEY.—Yes.

Mr. CANNON.—We note an exception.

The action of the Court in allowing said question to be asked and answered is here assigned as

**Error No. 15.**

70 A. Approximately fifty-five thousand volts between wires.

WITNESS.—(Continuing.) There would be more or less voltage on the wire at the Fairview substation,

(Testimony of R. H. Halpenny.)

probably a small percentage less at Fairview. It is so small that you would hardly consider it; you could consider it at that distance between stations, at the same amount.

Mr. GEDNEY.—Q. If the volt-meter at Wonder showed fifty-five thousand volts, the volt-meter at Fairview would show practically the same voltage?

Mr. CANNON.—I object to that on the ground no foundation has been laid for the question. If  
71 counsel will concede that Mr. Halpenny is an expert on this subject, I will withdraw my objection; otherwise I think they should prove that he is an expert.

Mr. GEDNEY.—I hardly think that is a question for an expert.

Mr. CANNON.—It is a pure matter of opinion, that can only be answered by an expert. [242]

The COURT.—Read the question.

(The reporter reads the question.)

The COURT.—Well, if he says he knows, I will allow him to answer it.

Mr. CANNON.—We note an exception.

The action of the Court in allowing said question to be asked and answered is here assigned as

**Error No. 16.**

72 The WITNESS.—You understand this would not be read directly fifty-five thousand, the meter would not indicate that; but you would have to take account of the transformer ratios between the one hundred and ten volts which the meter would indicate and the potential on the line.



(Testimony of R. H. Halpenny.)

Considering that is understood, the meters would indicate very nearly the same.

WITNESS.—(Continuing.) There was a meter in the Fairview station on the 18th of July, 1911.

73       The station was kept locked and Mr. Perrin was supposed to look after the station when anybody would go over there, in so far as reading the meters was concerned. The volt-meter at about this time showed fifty-five thousand. That volt-meter is not on the main line of wire. There are two transformers between that and the line; there are two transformers between that and the line; there is first the power transformers, which you can hear; then there is an instrument, a potential transformer it is known as, with a further reduction which brings it down to practically a hundred and ten volts at the instrument. At Wonder, the in-

74       strument reading of the volt-meter was a hundred and ten. When the instrument read one hundred and ten the voltage on the main line at that point was about fifty-five thousand volts—fifty-four or fifty thousand. I am acquainted with the equipment in the company's substation at Fairview, and was acquainted in a general way with the electrical appliances, meters and so forth in the Mining Company's [243] substation at Fairview. The volt-meter at that Mining Company's substation was attached much in the same way, but perhaps had a different ratio. If I knew the reading of the volt-meter at the Mining Company's plant, I would be

(Testimony of R. H. Halpenny.)

safe in saying I could tell the voltage on the  
75 main line at that point within a few per cent.

The voltage upon the wires just outside the Pacific Power Company's substation at that time, between wires, would be about fifty-five thousand. That is what is known as a grounded neutral system. If there were fifty-five thousand volts between wires, the voltage between one of those wires and the ground would be somewhere in the neighborhood of between thirty-one and thirty-two thousand, that is, figuring the neutral is grounded.

Cross-examination by Mr. CANNON.

76 If this particular wire were grounded, the voltage from that particular point to the ground would be between thirty-one and thirty-two thousand volts.

Redirect Examination by Mr. GEDNEY.

Following along the wires as electricity would go, I think it is somewhere in the neighborhood of twelve or thirteen miles from Fairview to Wonder. Wonder is furthest from the Power Plant than Fairview.

**[Testimony of J. G. Scrugham, for Plaintiff.]**

Mr. J. G. SCRUGHAM produced as a witness on behalf of plaintiff, being first duly sworn, testified as follows:

Direct Examination by Mr. CURLER.

My name is J. G. Scrugham. I am an electrical engineer and professor of electrical engineering in the State University. I have been engaged as an instructor of electricity in the  
77

(Testimony of J. G. Scrugham.)

university since 1903. I as a student of electrical engineering in the State University of Kentucky, 1896 to 1900; graduate student in electrical engineering in the University of Michigan in 1901; electrician's helper for short periods [244] of time, and electrician and wireman for Cincinnati, New Orleans and Texas Pacific Railway in 1899; Craighead Engineering Company, Cincinnati, 1900; Metropolitan Elevated Railroad of Chicago in 1902; member of the International Electrical Congress in 1904; for the last ten years technical expert for a number of companies—Elko-Lamoille Power Company, Reno Power, Light & Water Company, Reno Traction Company, Southern Pacific Company, Truckee River General Electrical Company, Oregon Short Line Railroad Company, and a number of others. I have served as chief engineer in charge of design and construction on a high tension power line for the Elko-Lamoille Power Company the last two years. I have been frequently retained at different times as expert on different matters usually pertaining to high tension construction. If the Pacific Power Company was carrying fifty-five thousand volts of electricity, I would say it was a high tension power line. Anything over five hundred and fifty volts is considered a high tension power line. We would call this, perhaps, an extra high tension line. The usual and ordinary practice in high tension construction with reference to the height that the live ends connected with that construction are from the ground should be well out of



(Testimony of J. G. Scrugham.)

reach of a man working underneath it, that would  
be ten feet, approximately. The usual prac-  
80 tice is to have it—a sixty thousand volt line,  
approximately is about four-foot clearance.

If the amount of voltage between two of the high  
tension wires of the Pacific Power line on July 18th,  
1911, was approximately fifty-five thousand volts, if  
the system were a ground neutral system, as de-  
scribed by Mr. Halpenny, there would be approx-  
imately thirty-two or thirty-three thousand volts.  
The voltage on a line is the pressure, the electricity  
corresponding to the pressure of a water pipe line or  
head of water. The amperes is the electrical current

flowing in the line, corresponding [245] to  
81 cubic feet of water per second, or gallons of  
water per second. Electricity would jump,  
say from a point on the live arm of the arrester, No.  
1, to a person, under normal conditions, on a line  
carrying fifty-five thousand volts, if it is a grounded  
neutral, the same condition as prevailed on the  
Pacific Power Company line, it would jump about an  
inch and three quarters under normal conditions.  
From this point (indicating on model) the amount  
of voltage between that and the ground would be  
from thirty-two to thirty-three thousand volts.

82 This inch and three quarters is based on a  
voltage not of fifty-five thousand, but of  
thirty-three thousand volts between that point on the  
arrester and the ground. I am familiar with light-  
ning-arresters. I have measured this model. I am  
familiar with what is known as the horn type

(Testimony of J. G. Scrugham.)

arrester. Nearly all of the lightning arresters are based more or less on the horn gap principle; at least a large part of them in use in the west. We use something similar in the Elka plant; something similar in use in the Truckee River plant, may  
83 not be the same in form, but some qualification of the horn gap, that is, on the high tension side. I have seen almost exactly this arrester at Tonopah. The usual and customary height that the live arms of the arrester are put from the ground is at least nine or ten feet. They are put that height from the ground for the purpose of safety to human life.

Mr. CURLER.—Q. Basing your answer upon your technical knowledge and experience, state whether or not a lightning-arrester, with the live arm of the lightning-arrester within five feet nine inches of the ground, is a safe construction.

84 Mr. CANNON.—Objected to on the ground it is incompetent, irrelevant and immaterial, and no foundation laid for the question; not a proper subject of expert testimony, [246] and outside of the issues of the case; that the question as to whether this is a defective construction, or otherwise, is a false quantity in this case; and the question as to whether or not it is a defective construction, or otherwise, is not involved in this case, because, under the admitted facts of the case, the plaintiff was not work-  
85 ing with or operating this arrester, in the same way as he would be operating any piece of machinery or mechanical appliance; and

(Testimony of J. G. Scrugham.)

that the questions to be determined in this case must revolve around this proposition; not whether this lightning-arrester was put too high or too low, but as to whether the place which the plaintiff was put to work was a reasonably safe place, considering the natural dangers incident to his employment and his experience. And that whether the construction was or was not placed too high or too low, as per the practice of placing lightning-arresters, is an absolutely false quantity, because we are controlled  
86 in this case by the physical situation existing, whether proper or improper, when the plaintiff was put to work.

The COURT.—The objection will be overruled.

Mr. CANNON.—We note an exception.

The action of the Court in allowing said question to be asked and answered is here assigned as

**Error No. 17.**

A. I do not regard it as a safe construction.

Mr. CURLER.—Q. If the dead ends of the lightning-arrester were connected, as shown upon this construction, and the ground wire passed  
87 along a trench of the building, and passed out over a ground wire, and into a shaft, if a person came in contact with the dead arm of that arrester, or in contact with the ground wire, and a surge occurred upon the line sufficient to form an arc between the live and dead sides of the lightning-arrester, what would be the result to the man?



(Testimony of J. G. Scrugham.)

A. He would probably be severely injured; but it would depend on the efficiency of the ground; it is very difficult to obtain a thorough ground in this location.

Q. Will you just explain that, Professor?

88       A. Yes, sir. We have two paths for the current to go to the ground; one is through the ground wire, one is through the man's body. If there is any obstruction or impedance to the passage of the current to the ground wire; that is, any appreciable obstruction, it would depend on the efficiency of the ground; a portion of that will take the path through the man's body, probably injuring him very severely, even killing him.

WITNESS.—(Continuing.) A surge is a term used to describe an abnormal voltage on a high tension power line; that is, in this application, causing  
89       voltages beyond normal, and may be caused by a variety of reasons. If the line is carrying a very heavy current and the current is suddenly broken, a surge will result. If the wire were suddenly broken it would probably have the same result. If the arc across the lightning-arrester should smash the insulator, or be maintained, we might have a resulting surge. A lightning discharge might set up oscillations, resulting in a surge. We might have the phenomena of resonance taking place; that is a characteristic which depends on the construction of the line, length of the line, and capacity, and so forth. If there were several sub-

(Testimony of J. G. Scrugham.)

90 stations on a line, and the line was engaged  
in furnishing power for the different sub-  
stations, and the power were suddenly thrown off at  
one substation, we would have to have the load on the  
substation; assume a heavy current—probably have  
some resulting surge. I have examined the plaintiff  
in this case to determine the character of the burns  
he received. I observed scars upon the plaintiff.  
I have had no prior experience in directly examining  
scars from electrical burns. [248] We have two  
kinds of discharge; one is what we might term the  
static discharge, which the lightning-arrester  
91 is designed to relieve; then there is the  
dynamic current, or power current, which is  
on the line, and the lightning-arrester should hold  
that back. We have two kinds of discharges; static  
discharge, which the lightning-arrester is primarily  
designed to relieve.

Mr. CURLER.—Q. Assuming that the lines were  
carrying fifty-five thousand volts of electricity, as be-  
tween two of the lines, and the voltage between the  
live end of the lightning-arrester and the ground, was  
thirty-two to thirty-three thousand volts, how near  
to the live arm of the lightning-arrester would  
92 a person have to come before he would receive  
a discharge?

A. Under normal conditions approximately an  
inch and three-quarters, under abnormal conditions,  
it might jump two, three or four inches, and so forth.

Q. What do you mean by abnormal conditions?

(Testimony of J. G. Scrugham.)

A. A voltage higher than normal between the line and the ground.

Mr. CANNON.—I move to strike out the answer as to any other distance than one and three-quarters inches, on the ground there is no testimony here as to abnormal conditions.

93 Mr. CURLER.—Not at the present time, if your Honor please, that may be true; but as to whether there was an abnormal condition or not may be deduced from other testimony that will be presented in this case.

Mr. CANNON.—It is outside of the issues.

The COURT.—I will allow it to stand.

Mr. CANNON.—We note an exception.

The action of the Court in refusing to strike out said answer as requested is here assigned as

**Error No. 18. [249]**

A. That discharge I spoke of would be called an electrical discharge from the line to the ground.

94 WITNESS.—(Continuing.) An arc is an effect of an electric current passing between two bodies or electrodes; the visible effect is a highly superheated vapor, caused by the passage of the electric current. For example, an arc between two carbon electrodes is the incandescent carbon vapor, the carbon being heated to incandescence by the passage of the electric current. An arc between two copper wires would be a mixture of red hot air and copper vapor heated by the passage of the electric current. If there were an arc between the line



(Testimony of J. G. Scrugham.)

and a person, the arc would be the highly heated air or metallic vapor, mostly air, caused by the passage of electric current between the two bodies.

95 The brush discharge is a discharge of small quantities of electricity into the atmosphere from the conducting body, occurring under conditions of high electrical pressure; so called from the brush appearance of the object from which a discharge is taking place.

Mr. CURLER.—Q. Professor, will you illustrate by drawing the two, a brush discharge and an arc?

A. Shall I use the board?

Q. Yes, you may use the board, showing the difference between the two.

A. I am not much of an artist. (Draws on black-board.) Assume a metal ball connected with  
96 a source of high pressure electricity—we will say extra high pressure; we would have emanating from that fine zigzag lines, very fine (illustrating). Now, if I should bring another metallic ball connected to the opposite terminal, and establish a flow of current of considerable amperage (illustrating on blackboard), we would have a solid mass of flame, due to the heated air and metallic vapor; [250] this would constantly rise. That is about as good a definition as we can give—we can take the two terminals of an arc lamp.

Q. This on the left is the arc, and the other you designate as the brush? A. Yes.

97 Mr. CANNON.—I don't get yet what is the difference between the brush and the arc.

(Testimony of J. G. Scrugham.)

A. Essentially, the brush discharge is very high voltage and very little current; it is under such extremely high pressure it is forced off of the conductor in very small quantities; while the arc is one solid flow.

WITNESS.—(Continuing.) The exact type of horn arrester—not construction but type—is only found on two lines that I know of; that is the Pacific Power lines and the Nevada-California lines;  
98 called, I think, the Poole type, designed by Mr. Poole, that is my understanding. I have seen a very similar arrester to that at Tonopah. The height of the live wires of the one in Tonopah, I should say, is at least ten feet, it was well within the reach of a man.

Mr. CURLER.—Q. Professor, I show you a picture, have you seen that picture before? (Handing Foster's Electrical Engineer's Pocketbook to witness.) A. Yes, sir.

Q. What is that a picture of?

A. The detailed construction of the horn type arrester used by the American River Electric Company.

Q. Suppose that Mr. Sheaff received eight  
99 electrical burns on the left shoulder, and three electrical burns, one on the top of the right shoulder, and two below that on the back, from one discharge, in your opinion how would you account for those several burns?

Mr. CANNON.—Objected to on the ground it is incompetent, irrelevant and immaterial; no foundation

(Testimony of J. G. Scrugham.)

laid for [251] the question; it is entirely speculative, and not the subject of expert testimony; the witness has not qualified as an expert on that subject. And, furthermore, that it assumes that the plaintiff's electrical burns were received with one contact, or at the same time.

100      The COURT.—Is that how he would account for the number of burns?

Mr. CURLER.—That is it. How would he account for the number of burns, based upon his knowledge of electricity?

Mr. CANNON.—I would like to add to my objection, there is no testimony here that there were eight electrical burns on the left shoulder, or any testimony showing the number of burns any place on his shoulder or back.

Mr. CURLER.—As I have stated before, your Honor, that is admitted by the pleadings in this case.

Mr. CANNON.—I don't think so.

101      Mr. CURLER.—There is a specific allegation to that effect; and the defendant in this case says it don't know anything about it.

Mr. CANNON.—The denial is the usual denial, where there is not sufficient information or belief on the subject to enable to defendant to answer; and basing it on that fact, and on that ground, it denies the allegation of the complaint—denies anything about the details of the injuries.

(Argument.)

The COURT.—I will allow the question.

Mr. CANNON.—We note an exception.



(Testimony of J. G. Scrugham.)

The action of the Court in allowing said question to be asked and answered is here assigned as

**Error No. 19.**

102        Mr. CURLER.—I will modify that question.

I said at the same time, I mean at this one occurrence. [252]

Mr. CANNON.—Let the objection be considered as being made to the question as amended.

The WITNESS.—The number of burns was probably due to his falling—different surfaces of his body presented different points; the easiest path for the arc to travel through his body to the ground. We take two carbon points, two wires with an arc passing between them; that arc does not remain constant in one place, it travels unusually upward; or  
103    if there is a wind blowing, it may travel in various directions, depending on the air currents.

WITNESS.—(Continuing.) If an arc were formed between the live end of a lightning-arrester and a person's body, the body being clothed, it would undoubtedly burn the clothing.